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FELICITATIONS TO

HIS EXCELLENCY, THE MOST REVEREND FRANCESCO LARDONE, S.T.D., J.U.D.

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THOUGH it is true that among the noteworthy achievements of the newly appointed Apostolic Nuncio to Haiti and Santo Domingo, a minor place must be assigned the role he played in the foundation of " The Jurist " nine years ago, nevertheless those who were the beneficiaries of the sustaining counsel he generously contributed in those pioneering days find in it a special reason for rejoicing in the honor the Holy See has bestowed on him.

Indeed, along with the University personnel in general they are happy that his twenty-five years of service to the University have been so appropriately rewarded. But their participation in this sentiment does not absorb the keen gratification at his promotion that they tenaciously defend as their own particular possession. Nor is it lost in the intensity of the satisfaction they share with all the members of the Faculties of the three ecclesiastical schools of the studies of which he was for many years the director. Their own treasure remains lustrous in the midst of so much resplendence and their note of praise has its own distinctive tone.

Moreover, as often as the meetings of the Riccobono Seminar are recorded in these pages, just so often will be remembered the part he played in its origin and perpetuation. And in the remembrance of it there will return his influence to assist in the maintenance of the standards which " The Jurist " has already established under his exacting and stimulating advice.

ALMS FOR THE CLERGY

THE temporal welfare of the clergy has always been an object of the concern of the Church. The Decree of Gratian offers evidence that in 601, Pope Gregory the Great in a letter to St. Augustine, Apostle of England, instructed him in the manner in which he was to provide for the support of the clergy.[1] Though usurping in this matter the province of the ecclesiastical legislator, Justinian pointed to a similar concern when in his Novels he insisted (ca. 540) that before a founder established a church he was obliged to consult the bishop, and at the same time to declare what he was willing to subscribe for the support of the priest who was to be placed in charge.[2]

Pope Alexander III (1159-1181) in the III Lateran Council (1179) condemned the practice of ordaining priests without a "title", i.e., without a source of fitting and adequate support for life. He likewise decreed that, in default of a suitable support from a particular church to which the priest might be attached, the bishop should be required to make up the deficit needed to prevent the priest from falling into actual want.[3] Pope Innocent III (1198-1216) at the IV General Council of the Lateran (1215) reflected a similar concern when he condemned patrons who supported clerics in miserly fashion. He bitterly complained about the resulting lack of learning on the part of the clergy, an evil which he said could be obviated if the priest in charge of a parish should receive an adequate income.[4]

The Council of Trent, as might be expected, gave due attention to this matter and ordered that every priest be supplied

[1] C. 30, C. XII, q. 2.

[2] Nov. (67. 2).

[3] Cc. 2, 4, X, *de praebendis et dignitatibus,* III, 5.

[4] C. 30, X, *de praebendis et dignitatibus,* III, 5.

with a title which would yield a decent support for life, in sickness and in health, in good fortune and in misfortune.[5]

The primary title of ordination was, under the Tridentine legislation as it is under the law of the Code, the title of benefice. But the introduction of this title into the United States was made difficult by the poverty of the Church here during the period when its activity was almost entirely of a missionary character. Certainly foundations of benefices by lay patrons could not be expected. On the other hand, the laborer was worthy of a livelihood. Indeed, a cleric could not be expected, in opposition to the clear intent of canonical tradition, especially as expressed in the legislation of the Council of Trent, to obtain his livelihood from sources alien to the dignity of the clerical state. An alternate method of supporting the clergy in the United States had to be found. What was more appropriate than that Bishop Carroll, confronted by the problem of supporting a missionary clergy should look to the early days of the Church's history when all the clergy were missioners? In doing so he found that as late as Gregory the Great the traditional method by which the clergy was supported was one in which the clergy was regarded as voluntarily living a life of poverty entitled, along with the poor, to receive food and other necessities of life from a fund consisting of alms administered by the bishop of the respective diocese.[6] It was this plan of support that he endorsed when in 1792 he affirmed in his Pastoral Letter that the Church had always regarded the offerings of the faithful as consecrated to God and had consistently decreed in its canons that these

[5] Sess. XXI, *de ref.*, c. 2.

[6] In a letter to Leo, Bishop of Catania, Gregory the Great pointed to the obligation of the bishop to set aside one-fourth of the alms for the support of the clergy; cf. *Epistolarum Liber VII*, n. 8—Mansi, X, 90. The mathematical division of the alms into four parts was customary throughout the whole Church at the time of Pope St. Gelasius I (492-496 ; cf. the general formula in the *Liber Diurnus* as edited by de Rozière (Paris, 1869), n. VI, p. 27. The other three parts were assigned respectively to the bishop, the poor, and the repair and maintenance of church buildings.

offerings should be used first for the maintenance of the ministers of the sanctuary and then for the relief of the poor and for the building and the repairing of churches.[7]

The I National Synod of the United States, held in the preceding year, had already decreed that the voluntary offerings of the faithful were to be collected and distributed in the following manner: one part was to be applied to the sustenance and support of the priests, another to the relief of the poor, and the third to the procuring of all things necessary for divine service and the maintenance of the church.[8] The Synod admonished the faithful that those who did not contribute to the support of the priests, according to their means, would be violating the Divine law and would be answerable to God.[9] The language of the Synod indicated that absolution was to be denied those guilty of this violation.[10]

Evidently the faithful were not doing their full duty in this matter of support of the priests, for the Fathers of the III Provincial Council of Baltimore (1837) felt it again necessary to admonish the people of the duty incumbent upon them to provide a decent support for their priests both in sickness and in health.[11]

The Latin word "*salarium*" was first used officially, in reference to the share of the offerings assigned to priests, in

[7] Guilday, *National Pastorals of the American Hierarchy* (Washington, D.C.: N.C.W.C., 1923), p. 7.

[8] Cf. Statutes V, VI, VII—*Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis* (7 vols., Friburgi Brisgoviae: Herder, 1870-1892), III, 3 (hereafter cited *Collectio Lacensis*).

[9] Statute XXIII—*Collectio Lacensis*, III, 6.

[10] The Sacred Congregation for the Propagation of the Faith insisted that the offerings should be considered as subject to the voluntary generosity of the faithful and that the sacrament of baptism was not to be denied because of failure in this respect; cf. *Fontes*, n. 4705; moreover, the refusal of absolution for this reason was forbidden by the III Plenary Council of Baltimore; cf. *Acta*, n. 292.

[11] This was the provision of the second decree; cf. *Collectio Lacensis*, III, 56; cf. II Conc. Plen. Balt., *Acta*, n. 90.

the III Plenary Council of Baltimore (1884).[12] On the other hand, the word "*salarium*" is not used in the general legislation of the Church with reference to the support of a priest.[13] "*Salarium*" has, however, been employed in this sense not only in the legislation of the III Plenary Council of Baltimore (1884) but also in those subsequent provincial councils and diocesan synods which restated and gave local implementation to legislation of that Plenary Council. It is, then, in accordance with the decree of the III Plenary Council of Baltimore that in the United States the fixed and proportionate amount which a priest receives for his support is called "*congruae seu salarii nomine.*" Since the Latin word "*salarii*" is used here in juxtaposition with the word "*congruae*" it is only reasonable to assume that the hierarchy in the carefully drawn legislation of the III Plenary Council of Baltimore placed the word "*salarii*" in apposition to "*congruae*" to signify that the technical legal meaning of the two words was, for the purpose of the law, identical. It follows that the word "*sa-*

[12] The text of the pertinent legislation is: "Ne tamen rectus justitiae ordo turbetur, nec integram suspicio lucri minuat famam, decernimus ut Episcopi . . . e consultorum consilio, fixam ratamque definiant summam quae ab ecclesiarum rectoribus *congruae sev salarii* [italics inserted] nomine percipi possit. Minori tamen summa contenti sint oportet sacerdotes casu quo . . . missiones per reditus suos annuos *statutam congruam* [italics inserted] suppeditare nequeant, cujus rei judex erit Ordinarius, audito consultorum consilio." Cf. *Acta,* n. 273. An examination of American ecclesiastical legislation indicates that the use of the word "*salarium*" regarding the support of priests was first introduced by the III Plenary Council of Baltimore (1884) which gave this word the same technical meaning as "*congrua.*" Cf. DuCange, D., *Glossarium Mediae et Infimae Latinitatis* (Niort, 1883-1887), s. v. "*congrua.*" Earlier American legislation, as indicated in the first Synod (1791) up to and including the II Plenary Council of Baltimore (1866), followed the more traditional terminology of the Church regarding the support of priests. The Synod of 1791 (Statute VII) called the priest's support "una [pars]" of the offerings of the faithful. The II Plenary Council of Baltimore (1866) (*Acta,* n. 108; a verbatim quotation of the first decree of the I Provincial Council [1829]) called the support of priests a "sufficiens ad vitae decentem sustentationem *subsidium* [italics inserted]"—("subsidium"—the same word utilized in *The Code of Canon Law* [Canon 981, § 2]).

[13] Cf. Lauer's *Index Verborum Codicis Iuris Canonici* (Typis Polyglottis Vaticanis, 1941).

larium" as used with reference to the support of priests in the United States has the same technical canonical meaning as *"congrua"*—a word the meaning of which has been crystallized by centuries of usage in the universal Church.

The transliteration of *"salarium"* (a term having a technical legal meaning in the legislation of the III Plenary Council of Baltimore) from Latin into English involving the use in the transliteration of the word "salary" (a term having an equally though different technical legal meaning at both English and American law) has, it seems, led to some misapprehension regarding the nature of support of priests. Since in the technical sense of English and American law, "salary" connotes a Common Law contract of employment, it has been inferred by some, both inside and outside the Church, that priests receive support from a contract of employment. From a consideration of the foregoing analysis it is apparent that this inference is not warranted at law. It is equally clear that conversational misuse of the technical legal term "salary" is not an adequate foundation on which to construct a legal concept. Accurate canonical terminology regarding the support of a priest indicates that the fixed amount received be called not a "salary", since it is not income derived from a contract of employment, but rather the priest's *"salarium"* (i.e., the Latin term used by the III Plenary Council) or even more fittingly the priest's *"congrua."*

By the conciliar rule, the *"salarium"* was a portion of the annual income of the parish, i.e., of the collections taken up in the church. If the congregation was unable to contribute sufficient to make up the *"salarium"* as allocated by the rule of the diocese, priests were exhorted to be content with a smaller sum. Moreover, the Council insisted that the bishop was not held in this case to supply the deficit as long as the priest received a sufficient income to provide him with food, shelter and the bare necessities of life and not even when these were lacking if the bishop and his consultors judged that this situation could be traced to the priest's own serious

fault.[14] If the priest failed to receive the "*salarium*" within one year, all right to receive it was lost and it could not be collected at any future time unless a written demand for it had been submitted to the Ordinary or the chancellor and had been approved by either of them.[15]

The limitations thus imposed on the claim of the incumbent of a mission to a specific alms as the means of his livelihood can easily lead to the conclusion that the Fathers of the Council were reluctant to permit the claim to become too specific. It is noteworthy to recall in this context that prior to the III Plenary Council of Baltimore there had been successfully avoided, whether consciously or not, the definite and precise determination of the amount needed by a priest for his adequate support. In the legislation of the I Synod (1791) and of the III Provincial Council (1837), the emphasis was placed on the obligation of the faithful to comply with their obligation of supporting the clergy. The Synod of 1791 did refer to the source of the cleric's support as one part (*una pars*) of the contributions of the faithful. But that obviously placed the income of the cleric on a percentage basis. No specific amount was indicated. It could be very small; most likely it was very small. Moreover, it would be unequal. It is true that inequality is really not an objection, since according to the ecclesiastical system of benefices, inequality of income is almost inescapable in practice. The objection to the inequality of the percentage basis of clerical income established by the legislation of the I Synod was that it did not provide for any minimum. Under its rule inequality meant that, of a desti-

[14] It may be doubted whether this portion of the decree can be reconciled with the apparently opposite view of the III Lateran Council (c. 4, *de praebendis et dignitatibus*, III, 5) and the Council of Trent (sess. XXI, *de ref.*, c. 2), as well as can 981, § 2. Meier argues that only on deposition does the cleric lose his claim in justice to be honorably supported by the diocese; cf. "Provisions for the Pastor Affected by Penal Administrative Deprivation"—THE JURIST, I (1941), 208, 209.

[15] *Acta*, n. 281.

tute clergy, some members could be more close to complete destitution than others; it did not mean that, of an adequately supported clergy, some would have an income enabling them to live with greater dignity than others.

The indefiniteness of the clerical income was actually stressed in the legislation of the I Provincial Council (1829), the rule of which in this matter was incorporated verbatim in the laws of the II Plenary Council (1866).[16] The reference to the income in that legislation was one that practically argued for the preservation of the status quo in regard to the desired specification of the minimum amount to which a cleric might have a claim. The rule insisted on the obedience that must be shown the bishop when he makes appointments and referred to the cleric's promise to accept such appointments. As such, even independently of the special promise, it was in perfect conformity to the traditional obligation of the clergy, one that finds expression in canon 128.[17] But in emphasizing this obligation of the clergy it minimized the corresponding claim by eliminating any objective measurement on which a claim of the clergy could be based.[18] If one might invoke an illustration from the field of social work, the alms needed by the clergy was denied a budgetary computation.[19] It is true that at that early day scientific budgeting of the needs of the

[16] *Acta*, n. 108.

[17] Can. 128. Quoties et quandiu id, iudicio proprii Ordinarii, exigat Ecclesiae necessitas, ac nisi legitimum impedimentum excuset, suscipiendum est clericis ac fideliter implendum munus quod ipsis fuerit ab Episcopo commissum.

[18] *Acta*, n. 108. . . . monemus omnes sacerdotes in hisce dioecesibus degentes, sive fuerint in iis ordinati, sive in easdem co-optati, ut memores promissionis in ordinatione emissae, non detrectent vacare cuilibet missioni ab episcopo designatae, si episcopus judicet sufficiens ad vitae decentem sustentationem subsidium illic haberi posse, idque munus viribus et valetudini sacerdotum ipsorum convenire.

[19] One says nothing of the sufficiency of the program of collection calculated to raise the amount determined by the budget.

poor had not yet been introduced.[20] If it had been, it is possible that the need of a clerical budget would have been felt and that the plan for the determination of it would not have been postponed until the III Plenary Council.

Like any other itemized list, a budget calls attention to details. In the absence of a budget, many items essential to an adequate livelihood can be easily overlooked. This is as true of the living needs of a cleric as of any other recipient of alms. A Christmas basket is an appropriate manifestation of Christian charity at an appropriate season of the year, but it lacks the inclusiveness of a carefully estimated budget. So, prior to the III Plenary Council, a Christmas collection might attest the generosity of the parishioners at a given season, but it lacked the precision possessed by an estimate of the precise sum needed by the cleric to meet the various items of expense that confronted him during the year. Even after the III Plenary Council such a generous Christmas collection might be subjectively regarded as sufficient to relieve the diocesan authorities of the need of making good the difference between the amount collected and the annual alms determined by diocesan norms in behalf of the clergy of the respective diocese. Indeed, even in estimating the amount of the annual alms in accordance with the provision of the III Plenary Council, those charged with this responsibility should impose on themselves the itemization of the needs of the clergy of the respective diocese. Otherwise, the amount allocated may actually be niggardly while it seem bounteous, as it would be if given over and above the amount required to meet the ordinary needs of the clergy. In the absence of an itemized consideration of the elements requisite to the cleric's livelihood, it is entirely likely that he will be denied the fitting support (*congrua sustentatio*) to which the general law entitles him. It is because detail is important in this matter that it seems not

[20] But the Society of St. Vincent de Paul, introduced in New York by Archbishop Hughes, was, at least by the time of the II Plenary Council, taking the poor off the street corners and meeting their needs in their homes.

to be amiss to insert at this point a consideration of the concept of the fitting support of the clergy and of the elements that constitute it.

Fitting support (*congrua sustentatio*) means that type of livelihood which the cleric needs in consideration of his clerical dignity, his merits, and the circumstances of the region in which he ministers. The amount requisite to insure it is, therefore, not an invariable, fixed amount in the case of all members of the clergy throughout the world. It does, however, universally include the following elements. In some measure, these should be furnished to every cleric everywhere. They are: adequate food, clothing, housing, moderate recreation, books for study, sufficient medical care, support for dependent near relatives, allowance for grants to charity and to deserving causes, adequate provision for possible retirement or disability unless the cleric is assured of receiving a sufficient pension in case of retirement or disability, and sufficient funds for extending hospitality within reasonable limits. The degree or amount in which these elements are to be afforded to clerics is determined by the Ordinary according to their ecclesiastical dignity and merits with due regard for the prevailing standard of living in that community as well as the resources of the parish or benefice which is supporting them.

Worthy of emphasis among the items listed is the duty of a cleric to support his dependent near relatives, with the consequent need of receiving enough to enable him to discharge that duty. No one can seriously deny that a priest has the duty to support his dependent parents, brothers and sisters if there is no one else in the family on whom rests a prior obligation of support; he shares that responsibility, in accordance with his means, with the other members of the family who are equally bound with him.

The quality of the items constituting the elements of support is not the same for all but must be measured according to the cleric's ecclesiastical dignity and merits. Certainly a bishop needs to maintain a higher standard of living, with

the resulting increase in financial obligations, than a pastor or an assistant pastor. For the same reason, a pastor needs to receive more than an assistant pastor.

In the case of merit there might be some who would contend that a poor man should receive an alms according to his needs and not according to his merit, as if merit itself did not create a need. Merit creates in the meritorious person a capacity for reward, not to say a veritable hunger for it. That hunger may be appeased in more ways than by the giving of an alms, often by a kind word of appreciation. But if an alms comes to be an acknowledged means of rewarding merit, then failure to give the alms, no matter how many kind words are exchanged with the meritorious person, is equivalent to a denial of the reward. It results in leaving the meritorious person hungry and unrequited. While we may say that the meritorious person should expect his reward in Heaven, no one is foolhardy enough to tell the hungry man to look for his meat in Heaven. Thus do we deny an emotional need of earthly reward, while recognizing the more readily ascertainable physical claims of the man in need of bread.

The merit of the clergy that creates a need of reward includes unusual zeal, the exercise of exceptional administrative ability, services rendered through the possession of extraordinary talent or learning, as well as notable diligence and thoroughness in the fulfillment of tasks assigned or initiative in prudently assuming responsibility beyond the call of duty. Thus, a need of special reward is felt by a priest who successfully administers a large parish or who adequately fills a position entailing the possession of specialized knowledge or of large experience, as well as by an active vicar general or a chancellor.

The prevailing standard of living and the financial status of the parish or benefice also have some bearing on the determination of the fitting support due to the clergy. Indeed, it may be said that the financial status of the parish determines the prevailing standard of living for the Catholics whom the

pastor serves. A pastor cannot maintain, without scandal, a standard of living that is more than a few degrees above that of the people he serves. A pastor in a rather poor section, in a predominantly non-Catholic region cannot have the same needs as a pastor in a wealthy, predominantly Catholic region. The same can be said of a bishop or of any dignitary of the Church. Naturally, the varying economic conditions among nations result in a different standard of living for bishops and clergy in those countries. On the other hand, luxurious and ostentatious living never constitute a need of the clergy regardless of the wealth of the region in which they labor, since the wants of such a life are entirely extravagant and wholly inconsistent with the sacred dignity of their calling.

Thus the fitting support of the clergy under normal circumstances is seen to include the supplying of a rather extensive list of needs. In the exceptional case, however, it must be modified so that the lack of means will not result in spiritual harm to souls. *Salus animarum lex suprema.* In this sense one cannot do otherwise than applaud the rule of the I Provincial Council of Baltimore in requiring that if the Ordinary appoints a priest as pastor to a parish which can afford only enough to meet the minimum, current living expenses of the cleric, the cleric is nevertheless obliged to accept the appointment. The verbatim repetition of this rule in the II Plenary Council merits, for the same reason, the same encomiums.

The indefiniteness of the III Provincial Council (1837) with regard to the amount required to afford the clergy fitting support did not prevent it from giving its attention, again indefinitely, to one of the items of expense that should be met by it. The II Plenary Council of Baltimore quoted this decree verbatim.[21] It concerned the need of making provision for sickness and old age. It insisted, as a general principle, that it is unbecoming for a priest to suffer the want of the necessities of life or to beg; it then required the bishops to see to it that the faithful should support ailing or incapacitated

[21] *Acta,* n. 90.

priests who had served them in their parishes. If the faithful of a given parish were unable to do this, the council exhorted the bishops to appeal to the charity of other priests and the faithful in general. It also expressed the desire that the bishops, in consultation with and aided by the priests, should, as soon as possible, devise means to provide an established and determined income for sick, aged and incapacitated priests.

The III Plenary Council was more explicit in its regulations concerning the support of infirm and aged priests. In its decree, n. 71, it determined that each bishop in his own diocese, in consultation with his clergy, should as soon as possible provide means whereby infirm and aged priests might be given adequate support. It advised that a fund be established by the imposition of a tax on the parishes. However, if the bishop judged it more prudent not to impose such a tax because of many previous appeals for funds, he was authorized to impose an annual tax on the priests themselves, proportionate to their income. The fund collected through either of these systems of taxation was to be administered by a committee of priests under the presidency of the bishop.

The council also suggested as a third plan that a mutual aid society might be established among the priests. The society itself was authorized to administer its funds under the presidency of the bishop. If a society of this kind was established, every priest of the diocese was to be given an urgent invitation to join it.

The method of obtaining funds for the care of the infirm and aged priests by imposing a tax on the parishes or the pastors seems to be out of harmony with the present norms of the common law. Although canon 1505 [22] allows the local

[22] Can. 1505. Loci Ordinarius, praeter tributum pro Seminario, de quo in can. 1355, 1356, aut beneficialem pensionem de qua in can. 1429, potest, speciali dioecesis necessitate impellente, omnibus beneficiariis, sive saecularibus sive religiosis, extraordinariam et moderatam exactionem imponere.

Can. 1506. Aliud tributum in bonum dioecesis vel pro patrono imponere ecclesiis, beneficiis aliisque institutis ecclesiasticis, quanquam sibi subiectis, Ordinarius potest tantummodo in actu fundationis vel consecrationis; sed nullum imponi tributum potest super eleemosynis Missarum sive manualium sive fundatarum.

Ordinary to impose an assessment on beneficiaries, such a tax can be imposed only if a special necessity of the diocese demands it and the tax is a moderate one. Even though the raising of this fund may be considered a diocesan necessity, it is doubtful whether sufficient money would be obtained from the single moderate assessment which was thus imposed. For the moderate assessment naturally must be small. It would require the contributions of a great number of parishes to constitute an amount sufficient to establish the fund.

Since, however, the Code allows the collection of a pension in favor of a pastor emeritus from the income of the parochial benefice relinquished by him,[23] it does not entirely close the door to assessment as a means of supporting aged and infirm priests. Though this pension can, as an exceptional concession outside the rule of canon 1429, § 1,[24] be collected during the lifetime not only of the incumbent but also of the retiring pastor himself,[25] it may not prove, since it is limited to one-third the income of the benefice, sufficient to provide, in all cases, a means of proper support for the pensioner.

In view of this difficulty, it is no easy matter to offer a reliable judgment concerning the most efficient method for the organization of such a fund. The following suggestion seems not entirely destitute of merit: a special appeal could be made to the faithful at large in an announcement of a collection for this particular purpose. The amount of money obtained

[23] Can. 1429, § 2. Beneficiis autem paroecialibus non possunt [Ordinarii loci], nisi in commodum parochi vel vicarii eiusdem paroeciae a munere abeuntis, imponere pensiones, quae tamen ne excedant tertiam partem reditus paroeciae, quibusvis deductis expensis et incertis reditibus.

[24] Can. 1429, § 1. Beneficiis quibuslibet nequeunt Ordinarii locorum pensiones perpetuas aut temporarias imponere quae ad vitam pensionarii durent, sed possunt, dum beneficium conferunt, ex iusta causa in ipso collationis actu exprimenda, eisdem imponere pensiones temporarias, quae durent ad vitam beneficiarii, salva huic congrua portione.

[25] Cf. Code Commission, 20 maii 1923, IX—*AAS*, XVI (1924), 116; Bouscaren, *The Canon Law Digest*, I, 702; S.C.C., resol. 11 nov. 1922—*AAS*, XV (1923), 454; Bouscaren, *The Canon Law Digest*, I, 838.

through this collection could be profitably invested; from the resulting income an annual income might be obtained sufficient to support the sick and aged priests. If the income should prove insufficient, the collection could be taken up annually.

The III Plenary Council itself suggested the plan of the mutual aid society. This suggestion does not offend against the norms of the Code, since it implies a voluntary payment of a specified assessment on the part of the priests who cooperate in the promotion of such a society. In one diocese this plan is combined with an annual collection. The details of the method under which it operates in that diocese are briefly the following.

Each diocesan priest is invited to join the diocesan association of priests, but no one is required to do so. Members pay dues of twenty dollars per year. An annual collection is taken up in the churches for this designated purpose. The fund is handled by a committee of priests with the bishop at the head. Priests who retire because of illness or advanced age are entitled to receive a thousand dollars a year. Those who do not pay their dues are required to do so before they are eligible for benefits. Moreover, priests who are delinquent do not become eligible for benefits until after a certain waiting period has expired, to be determined by the length of time during which they neglected to pay their dues. In practice, the bishop recognizes, even during this interval, their canonical claim and supports them from other funds—but there is enough uncertainty and inconvenience involved in collecting this allotment to warrant whole-hearted support of the association. In this way the priests feel that they have a "right" to support in their old age and infirmity. It is logical to suppose, as a result, that many will retire at a reasonable age instead of insisting on retaining their parishes even when they have been completely incapacitated to fulfill the obligations of a pastor.

If annual reports to the members accompany such a plan, its effectiveness in meeting the needs of the retired clergy can be adequately advertised and lead to an increase in the number of those who lend their names to its roster. Moreover, if it is seen that there is an intention to increase the annual pension of members when the annual income of the association, balanced against annual claims, allows it, an incentive can be offered the diocesan clergy to make the association one of the beneficiaries under their wills.

Neither the law of the Code nor that of the Councils of Baltimore prevent a diocese from making use of the facilities in this respect offered by reliable insurance companies. It seems entirely possible that a plan of security payments for the diocesan clergy could be worked out with the representatives of such companies. The lending of their names to "blanket" policies of this kind must be left entirely to the choice of the priests, as in the case of the payment of dues to a diocesan mutual aid association. But a relatively small proportion of the diocesan clergy is, it seems likely, sufficient to enlist the interest of the insurance companies. Once the plan has been put into effective operation, its advantages can be constantly held before the eyes of those who have remained aloof; thus by degrees an ever increasing segment of the entire body of diocesan clergy can be placed under the insurance policy's protection.

Reference to Mass stipends and stole fees has been lacking in the foregoing because the central idea to which attention was directed was the basic need of the cleric for fitting support. Both Mass stipends and stole fees afford sources of income from which this fitting support may be derived. Indeed, the specific alms allotted the clergy by diocesan regulation may be less in proportion to the size of the income derived from Mass stipends and stole fees.

No one, then, can doubt that stole fees play an important role in the support of the clergy. What income, precisely, should be classified under the category of stole fees? Although

some include in this category the offerings made by the faithful on the occasion of certain sacred functions as well as on the occasion of the administration of certain sacraments and sacramentals, nevertheless, the present usage of the term restricts it to include only offerings made on the occasion of the administration of the sacraments of baptism and matrimony and on the occasion of a funeral.

In reference to the determination of the amount of stole fees the Code explicitly mentions that fees in connection with the administration of the sacraments cannot be asked for unless they have been sanctioned by canon 1507, § 1, which states that such fees must be established by a provincial council, and approved by the Holy See. Funeral fees, on the other hand, are subject to regulation by diocesan schedules in accordance with canon 1234.[26]

A question can be raised whether the offerings made by the faithful in the United States on the occasion of the administration of the sacraments should be regarded as voluntary offerings or as taxes, i.e., as stole fees.

Canon 736 [27] excludes any stole fees, at least in connection with the administration of the sacraments, unless they are sanctioned by canon 1507, § 1; that is, unless they are established by a provincial council and approved by the Holy See.

[26] Can. 1507, § 1. Salvo praescripto can. 1056 et can. 1234, praefinire taxas pro variis actibus iurisdictionis voluntariae vel pro exsecutione rescriptorum Sedis Apostolicae vel occasione ministrationis Sacramentorum vel Sacramentalium, in tota ecclesiastica provincia solvendas, est Concilii provincialis aut conventus Episcoporum provinciae; sed nulla vi praefinitio eiusmodi pollet, nisi prius a Sede Apostolica approbata fuerit.

Can. 1234, § 1. Locorum Ordinarii indicem funeralium taxarum seu eleemosynarum, si non exsistat, pro suo territorio, de consilio Capituli cathedralis, ac, si opportunum duxerint, vicariorum foraneorum dioecesis et parochorum civitatis episcopalis, conficiant, attentis legitimis consuetudinibus particularibus et omnibus personarum et locorum circumstantiis; in eoque pro diversis casibus iura singulorum moderate determinent, ita ut quaelibet contentionum et scandali removeatur occasio.

[27] Can. 736. Pro administratione Sacramentorum minister nihil quavis de causa vel occasione sive directe sive indirecte exigat aut petat, praeter oblationes de quibus in can. 1507, § 1.

In many provinces of the United States no provincial council has been held and the Councils of Baltimore did not fix the amount of the stole fees. Thus it would seem that stole fees in the United States lack any canonical recognition. In theory then any priest whether a pastor or an assistant could accept any voluntary offering given to him and keep the entire fee himself, unless diocesan authority had acted, as admonished by the II Plenary Council of Baltimore (n. 94), to make an allocation of these voluntary offerings. On the other hand, the provision of canon 736 should rather be considered as modified by canon 463 [28] so that at least long-standing customs should be recognized even when they fix stole fees in connection with the reception of certain sacraments. Therefore in most sections of this country, though stole fees lack that canonical recognition which derives from establishment by a provincial council and approval by the Holy See, yet a long-standing custom of receiving determined offerings may be regarded as sufficient canonical authorization for requesting them as taxes from those who are able to pay them. In any event stole fees for the administration of the sacraments and the sacramentals can no longer be fixed by diocesan statute and the provision of the III Plenary Council of Baltimore justifying this procedure is rendered inoperative by the norm of canon 1507, § 1.[29]

To the support of what clerics may stole fees be allocated? The Code states that such offerings as are assigned to the

[28] Can. 463, § 1. Ius est parocho ad praestationes quas ei tribuit vel probata consuetudo vel legitima taxatio ad normam can. 1507, § 1.

[29] III Plenary Council of Baltimore, *Acta*, n. 294: In immensa hac regione, atque inter gentes ex variis Europae populis aut advenientes aut oriundas, ideoque indole ac moribus tam diversas, vix fieri potest, ut leges disciplinares uniformes sint pro omnibus provinciis aut dioecesibus. Itaque quod spectat ad jura stolae et taxam pro ministeriis ecclesiasticis determinandam, unusquisque Episcopus agat in synodo dioecesana, vel extra synodum auditis consultoribus eas leges ferat, quae clero ac populo suo magis convenire videantur. Meminerit autem (idque expresse in synodo commemoretur) ministeria ecclesiastica pauperibus esse gratis praestanda. Taxam quoque, si qua in synodo constitutatur, Romam mittat, ut Sanctae Sedis approbationi subjiciatur.

pastor either by custom or by law in accordance with canon 1507, § 1, belong to him.[30] But the common law does not absolutely require that the stole fees be allocated to the pastor. Hence, custom or particular law may dispose of stole fees, or part of them, otherwise than by assigning them to the pastor. In fact the II Plenary Council of Baltimore recommended that diocesan regulations be enacted governing the distribution of stole fees among the priests residing in the same rectory.[31] This norm, however, made specific reference to the offerings voluntarily made by the faithful. It cannot be invoked as a rule in determining the allocation of fees that can be requested on the basis of long-standing custom or of particular law. Indeed, even if it applied to fees in the strict sense it would need to be regarded as an inoperative norm as opposed to canon 1507, § 1, since the particular law that can allocate the fees received on the occasion of the administration of the sacraments is not diocesan statute but provincial law as approved by the Holy See.

If provincial law approved by the Holy See or long-standing custom does not divide stole fees among pastor and assistants, it seems that diocesan authority should not arrange for such a distribution by establishing these fees as a part of the income of the benefice.[32] For, though the support of an assistant can

[30] Cf. can. 463, § 1.

[31] II Plenary Council of Baltimore, *Acta,* n. 94 (a verbatim quotation of the third decree of the IV Provincial Council [1840]): Ne turpis lucri cupido sacerdotalem inficiat ordinem, vel aliqua oriatur inter sacerdotes simul commorantes dissensio, propter eleemosynas quas fideles occasione sacramentorum baptismi vel matrimonii administrationis sponte conferunt, monemus Episcopos ut in prima sua synodo dioecesana, vel alias, prout illis in Domino visum fuerit, consilio sacerdotum etiam adhibito, justam statuant rationem qua inter sacerdotes simul ita commorantes distribuantur, potioris juris et graviorum onerum pastoris non neglecta consideratione.

[32] Can 1410. Dotem beneficii constituunt sive bona quorum proprietas est penes ipsum ens iuridicum, sive certae et debitae praestationes alicuius familiae vel personae moralis, sive certae et voluntariae fidelium oblationes, quae ad beneficii rectorem spectent, *sive iura, ut dicitur, stolae intra fines taxationis dioecesanae vel legitimae consuetudinis,* . . . (italics inserted). The reference to *diocesan* taxation includes the funeral fees fixed by diocesan stat-

be assigned by diocesan authority out of the income of a benefice,[33] it seems that the alms for the assistant should rather be allocated from other income of the benefice rather than from the stole fees which belonged to the pastor by long-standing custom even before diocesan authority constituted them part of or all the pastor's income from the parochial benefice.

Of course, the body of pastors can consent to such an allocation. And should a case be found in which long-standing custom constitutes the offerings as taxes without giving a claim to them to anyone, diocesan authority seems competent to allocate them. This is also the case in which they remain mere offerings, for the II Plenary Council of Baltimore provides explicit warrant for such action.

Whether stole fees and Mass stipends are numerous or wanting, the alms of the cleric, inclusive of them in whatever quantity they come to him, should be adequate to insure his fitting support. In determining the diocesan standard in accordance with the rule of the III Plenary Council of Baltimore, the diocesan authorities, while attending to the itemized list of the wants which the annual income should be adequate to supply, may, indeed, take into consideration the income that is derived from Mass stipends and stole fees, even when the latter are not constituted a part of or all the income of a benefice.

Thus, for example, if x equals the total annual amount of a pastor's income from Mass stipends and stole fees, the formula for the diocesan annual alms collectible from the parish treasury could read x plus $1,000.00. In the case of a pastor who received four hundred dollars from Mass stipends and stole fees, the total annual alms would be $2x$ plus $1,000.00,

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ute, long-standing diocesan custom, and even the fees fixed by provincial rule and collectible within the territory of the respective suffragan dioceses.

[33] Can. 476, § 1. Si parochus propter populi multitudinem aliasve causas nequeat, iudicio Ordinarii, solus convenientem curam gerere paroeciae, eidem detur unus vel plures vicarii cooperatores, quibus congrua remuneratio assignetur.

i.e., $1,800.00; in the case of a pastor who received six hundred dollars from Mass stipends and stole fees, it would be $2,200.00. Since the amount received from Mass stipends and stole fees is an index of the size of the parish, the formula serves well to insure a greater reward to the pastor who is burdened with a larger share of financial and administrative responsibility.

Of course, if a pastor received no income at all from Mass stipends or stole fees, the diocesan formula would entitle him to only $1,000.00 and this would be his total annual income. The diocesan authorities could effectually control a case of this kind in order to insure that the total income would afford the pastor adequate support. The control could easily consist in the diversion to such a pastor of Mass stipends the disposition of which is in the discretion of the local Ordinary; for every Mass stipend thus received the pastor, under the given formula, would be entitled to collect an identical amount from the parish treasury.

What has been said in the foregoing is meant to serve, in some measure, as a guide or at least as a point of departure for those whose responsibility it is to see that the wants of the clergy are not left unnoticed and unprovided for. There has been no intent of permitting to enter into the discussion even the slightest intimation that the cleric is a hireling. Indeed, the use of the word "alms" has been constantly inserted in the text to describe the cleric's income as the equivalent of an offering to the poor. It is a tribute to the clergy everywhere, and particularly in missionary lands whither they have traveled avid only of sacrifice, that seldom have they awaited a command to serve in quarters where there were only meager financial rewards, but that, on the contrary, for such unrewarding stewardship there has never been wanting a whole host of volunteers.

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THE BURIAL OF PUBLIC SINNERS

THE fundamental principle underlying the denial of Christian burial was laid down by Pope St. Leo the Great (440-461). As repeated by Pope Innocent III (1198-1216), it insists that the Church, relying on a policy that is sanctioned both by the sacred canons and by custom, refuses to associate itself in death with those with whom it had no communion in life or with those who, cut off or separated from communion with it, have not been reconciled before death.

Those who are refused Christian burial may therefore be divided into two groups: the unbaptized, who never had a right to it; and the baptized who have been deprived of it. The denial of it visited upon those who commit definitely specified delicts is set forth in canon 1240, § 1, 1°-5°. With these the present article is only incidentally concerned. Its primary purpose is to study that class of persons who are denied Christian burial on the ground that they are "public and manifest sinners", without specification as to the type of sin upon which the penalty is made to operate.

The determination of the persons comprehended within that category must depend upon an interpretation of the meaning of "public and manifest", as well as of the limits to which the term "sinners" should be extended. The interpretation of terminology will thus be the concern of the first half of the article; the latter half will attempt to apply that interpretation to classes of sinners in the concrete case.

The result of the etymological study will lead to the limitation of the term "sinners", in the absence of scandal, to those who have been guilty of canonical delicts; it will even beforehand reach the conclusion that "public and manifest" means "notorious".

Notoriety is prerequisite for the denial of Christian burial on the basis of a delict or a sin committed by the deceased. This is explicitly required in canon 1240, § 1, 1°. It is implicitly presupposed in the remainder of canon 1240, § 1.[1]

A delict may be notorious in fact or by provision of law. It is such by provision of law after a competent judge has pronounced sentence even in a secular court.[2] It is notorious in fact when it is publicly known and beyond concealment through subterfuge or through legally acceptable excuse.[3] The majority of the authors argue that a delict is not notorious in fact unless it has already become publicly known or is about to become so;[4] they place the element of notoriety in this that the delict is unconcealable and inexcusable.[5] Thus noto-

[1] Can. 1240, § 1. Ecclesiastica sepultura privantur, nisi ante mortem aliqua dederint poenitentiae signa:

1° *Notorii* apostatae a christiana fide, aut sectae haereticae vel schismaticae aut sectae massonicae aliisve eiusdem generis societatibus *notorie* addicti [italics inserted];

2° Excommunicati vel interdicti post sententiam condemnatoriam vel declaratoriam;

3° Qui se ipsi occiderint deliberato consilio;

4° Mortui in duello aut ex vulnere inde relato;

5° Qui mandaverint suum corpus cremationi tradi;

6° Alii peccatores publici et manifesti.

[2] Cf. Coronata, *Institutiones Iuris Canonici* (5 vols., Taurini: Marietti, 1928-1936), IV, n. 1646 (hereafter cited *Institutiones*).

Can 2197. Delictum est: . . . 2° *Notorium notorietate iuris,* post sententiam iudicis competentis quae in rem iudicatam transierit aut post confessionem delinquentis in iudicio factam ad normam can. 1750.

Can. 1750. Assertio de aliquo facto, in scriptis aut oretenus ab una parte contra se et pro adversario coram iudice, sive sponte, sive iudice interrogante peracta, dicitur confessio iudicialis.

[3] Can. 2197. Delictum est: . . . 3° *Notorium notorietate facti,* si publice notum sit et in talibus adiunctis commissum, ut nulla tergiversatione celari nulloque iuris suffragio excusari possit; . . .

[4] Can. 2197. Delictum est: 1° *Publicum,* si iam divulgatum est aut talibus contigit seu versatur in adiunctis ut prudenter iudicari possit et debeat facile divulgatum iri; . . .

[5] Cf. Cerato, *Censurae Vigentes* (2. ed., Patavii: Typis Seminarii, 1921), n. 2; Chelodi, *Ius Poenale et Ordo Procedendi in Iudiciis Criminalibus iuxta*

riety produces a juridically established knowledge of guilt that cannot be denied. Canon 1747, 1°, confirms this statement by affirming that notorious facts need no proof. If any doubt remains as to the imputability of the delict, it is not notorious.[6] Therefore every notorious delict is a formal delict.[7]

Notoriety is implicitly required in canon 1240, § 1, 2°, since it is only after judicial sentence of excommunication or interdict that, on the basis of these penalties, Christian burial must be denied the deceased. Judicial sentence renders notorious by provision of law (*notorietate iuris*) the delicts thus punished. In the absence of such a sentence, the delicts might still be notorious in fact. In that case, they would suffice, under canon 1240, § 1, 6°, as a basis for the denial of Christian burial.

Factual notoriety of the delict is required by the remainder of canon 1240, § 1, if the delict is to afford ground for the denial of Christian burial. If this is true of the sins specified in canon 1240, § 1, 6°, it is true of suicide, dueling and an order of cremation. This conclusion follows from the fact that canon 1240, § 1, 6°, employs the word "*alii*" to link the public and manifest sinners it designates with the public and manifest sinners designated in canon 1240, § 1, 3°-5°. That the addition of the term "manifest" to "public" does postulate notoriety in the delict that demands a denial of Christian burial is rather readily apparent from the prevailing usage among the authors by which they freely interchange the

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Codicem Iuris Canonici (4. ed., recognita et aucta a Vigilio Dalpiaz, Tridenti: Libr. Moderna, Edit. A. Ardesi, 1935), n. 4 (hereafter cited *Ius Poenale*); Sole, *De Delictis et Poenis—Praelectiones in Lib. V. Codicis Iuris Canonici* (Romae: Pustet, 1920), p. 11; but cf. also Hollweck, *Die kirchliche Strafgesetze* (Mainz, 1899), § 5; Coronata, *Institutiones*, IV, nn. 1645-1647.

[6] Cf. Vermeersch-Creusen, *Epitome Iuris Canonici*, III (5. ed., Mechliniae-Romae: Dessain, 1936), n. 384.

[7] In spite of the presumption of imputability in a merely public delict, the accused may be able to establish excuse or justification; cf. Coronata, *ibid.*, nn. 1645, 1646.

Can. 2200, § 2. Posita externa legis violatione, dolus in foro externo praesumitur, donec contrarium probetur.

notion of a public and manifest delict with the notion of one that is notorious.[8] This conclusion is confirmed by the rule of canon 1240, § 2, which provides that Christian burial is not to be denied if there remains a persistent doubt as to the commission by the deceased of a delict under the terms of canon 1240, § 1.[9] It is only when there is no doubt of this kind that Christian burial can be denied. Now, it is when there exists no such doubt that the delict is notorious.

In reference to the general category of persons excluded from Christian burial designated by the term "public sinners", considerable difficulty arises from the fact that the legislator does not define what is meant in law by a "public sinner".[10] Recourse to commentators on pre-Code law shows that a quite comprehensive notion prevailed then as to the persons included under that designation. It included, as Many stated,[11] first, those specifically mentioned in the law as such: suicides, duelists, usurers, and those who failed to make their Easter duty; secondly, "public and manifest sinners" in general. The common opinion of the authors, he asserted, held that the latter category comprehended all those who died *publicly impenitent* [12] and those who lived in a state of notorious sin and died without signs of repentance, e.g., those who lived in a state of notorious concubinage or prostitution, those whose work or duty necessarily involved the committing of sin and members of condemned societies.

[8] Cf. Kerin, *The Privation of Christian Burial*, The Catholic University of America Canon Law Studies, n. 136 (Washington, D. C.: The Catholic University of America Press, 1941), pp. 141, 142, footnote 68.

[9] Can. 1240, § 2. Occurrente praedictis in casibus aliquo dubio, consulatur, si tempus sinat, Ordinarius; permanente dubio, cadaver sepulturae ecclesiasticae tradatur, its tamen ut removeatur scandalum.

[10] "Quinam autem sint dicendi publici peccatores non determinat Codex"—Coronata, *De Locis et Temporibus Sacris* (Taurini: Marietti, 1922), n. 263; cf. also Coronata, *Institutiones*, II, n. 816.

[11] *De Locis Sacris* (Paris, 1904), n. 220.

[12] Cf. Can. 942. Hoc sacramentum [Extremae Unctionis] non est conferendum illis qui impoenitentes in manifesto peccato mortali contumaciter perseverant; . . .

Whether this interpretation of the term "public sinner" can be considered to have been carried over into the law of the Code is not clear. The difficulty arises from the fact that the penal law punishes *delicts,* not *sins.*[13] Canon 1240, § 1, as a penal canon, inflicts a penalty that is automatically (*ipso facto*) incurred by the commission of certain *delicts.*[14] But a delict is essentially the external and morally imputable violation of a law to which a sanction, at least an indeterminate one, has been attached.[15] Therefore, there is no delict when no legally sanctioned law has been externally and culpably violated; *sin* and *delict* are not synonymous in the terminology of the Code.[16] It is thus possible to conceive of a notorious sinner who has not committed a notorious delict, i.e., one who has not committed a notorious sin in the canonical sense. Is such a person to be denied Christian burial?

The general punitive extent of the pre-Code penal law was not clearly limited. Wernz [17] and Lega [18] regarded it as comprehending, at least in the abstract, all external *sins;* D'Annibale [19] and Hollweck [20] restricted it to delicts, i.e., to offenses as defined in canon 2195, § 1, of the Code. This definition of

[13] Chelodi notes that the penal law was made to protect the juridical order and that it does not punish all actions which break the divine law or which are intrinsically evil or even all those acts which are forbidden by human law, but only those which endanger the social order; cf. *Ius Poenale,* n. 2.

[14] Authors refer quite generally to the offenses enumerated in this canon by calling them *delicts;* cf., e.g., Chelodi, *loc. cit.;* Coronata, *De Locis et Temporibus Sacris,* n. 263; *Institutiones,* II, n. 816; cf. Kerin, *op. cit.,* p. 220, footnote 256.

[15] Can. 2195, § 1. Nomine delicti, iure ecclesiastico, intelligitur externa et moraliter imputabilis legis violatio cui addita sit sanctio canonica saltem indeterminata.

[16] Cf. Chelodi, *loc. cit.;* Coronata, *Institutiones,* IV, n. 1641.

[17] *Ius Decretalium* (2. ed., 6 vols., Prati, 1906-1913), VI, n. 16.

[18] *Praelectiones in Textum Iuris Canonici de Iudiciis Ecclesiasticis,* III (Romae: 1899), n. 16.

[19] *Summula Theologiae Moralis* (5. ed., 3 vols., Romae, 1908), I, n. 296.

[20] *Die kirchliche Strafgesetze,* § 1.

an act subject to the penal law of the canons is in fact an incorporation into the Code of D'Annibale's view.[21]

However, new doubts have arisen because of canon 2222, § 1, which permits the infliction of penalties for evil acts other than those specifically prohibited by the positive law under explicit penal sanction. The problem of reconciling canons 2195, § 1, and 2222, § 1, is not to be treated here, but it must be noted that its existence is sufficient to render obscure the answer to the relevant question: is an evil act a delict only when it satisfies the specifications of canon 2195,§ 1.[22] This obscurity makes it impossible to state absolutely the definition of "public sinner" as affected by canon 1240, § 1, 6°. That term certainly includes those who are guilty of notorious *delicts*. Whether it also includes other notorious *sinners* remains in doubt. Because of this doubt, in the denial of Christian burial, the term should be limited to those who are guilty of notorious *delicts*.

The difficulty is largely speculative, however. This is so because there are included under the delicts specified in the Code most of the offenses which, under pre-Code discipline, resulted in the denial of Christian burial. Further, even though one were not guilty of a notorious delict in the sense of canon 2195, § 1, the notoriety of his sin would deprive him of Christian burial because of the very probable danger of grave scandal resulting from the granting of it to one so publicly unworthy.

In contrasting the discipline of the Code with that which preceded it, one observes the omission in the present discipline of any express mention of the culpable neglect of one's Easter duty as a delict punishable with the denial of Christian burial. It appears, then, that the Code has abolished this offense as a specific delict. The fulfillment of the Easter duty is com-

21 Cf. Roberti, *De Delictis et Poenis* (2. ed., Romae: apud Universitatem Utriusque Iuris, 1938), n. 53.

22 For the opinions in the controversy affecting the reconciliation of these two canons, cf. Roberti, *op. cit.*, nn. 49-53.

manded by canon 859.[23] However, no penalty is attached to the violation of the command.

On the other hand, the authors are agreed that while the neglect of one's Easter duty may not of itself be a delict, it may involve contempt or hatred of religion. In that case, the granting of Christian burial would be prevented because of the scandal that would result from it.[24]

In the case of gangsters, as they are designated by modern usage, it is to be expected that their offenses will qualify as delicts and not merely as sins, since they extend to murder, robbery, theft, and the like. If, by chance, one or the other of these offenders should prove to be guilty of notorious sin but not of a notorious delict, the great probability of grave scandal that would result from granting him Christian burial would annul his theoretical right to it.

Scandal can, of course, be eliminated, e.g., by the announcement of the signs of repentance which the sinner gave before his death and the elimination of all pomp and ceremony from the funeral, i.e., the restriction of the size of the procession, the prohibition of newspaper publicity and the omission of all chanting, music, and the ringing of bells.

Civil marriage and concubinage also present difficulty in regard to the Christian burial of those who lived in those habitual states. Since the offense thus committed is a delict,[25] this difficulty derives entirely from the counterbalancing effect of an otherwise upright life of a deceased Catholic who thus

[23] Can. 859, § 1. Omnis utriusque sexus fidelis, postquam ad annos discretionis, idest ad rationis usum, pervenerit, debet semel in anno, saltem in Paschate, Eucharistiae sacramentum recipere, nisi forte de consilio proprii sacerdotis, ob aliquam rationabilem causam, ad tempus ab eius perceptione duxerit abstinendum.

[24] Cf. Coronata, *Institutiones,* II, n. 816; Schaaf, "Catholic Burial of Public Sinners"—*The Ecclesiastical Review,* XCV (1936), 190; Kerin, *The Privation of Christian Burial,* p. 225.

[25] Can. 2357, § 2. Qui . . . in concubinatu publice vivant, . . . excludantur ab actibus legitimis ecclesiasticis, donec signa verae resipiscentiae dederint.

lived in a state of sin, i.e., of a Catholic who was faithful in attendance at Sunday Mass and was favorably known for his charity and honesty. In a case of this kind, it should not be forgotten that a sign of repentance for the delict of concubinage can be regarded as such only when it can be directly referred to that delict. In other words, acts of piety are of little avail to nullify the notoriety of the concubinage so long as the parties persist in that state. In the case of a sudden death, if a sign of repentance was given by the deceased that had direct reference to the specific offense, it should be given whatever value it may be prudently judged to possess in obviating both the scandal already given and that which might result from the granting of Christian burial. The promise of separation given in a deathbed reconciliation takes the deceased out of the category of notorious delinquents. In that case, the funeral services may commence even in the house of the deceased and even if the surviving partner in sin is to participate. The public reconciliation of the deceased restores his right to Christian burial. To insist that the funeral services should commence in another house and not that of the deceased would amount to an unjustified interdict of the latter's home. As for the presence of the partner in sin at the obsequies, it is relevant to note that if even tolerated excommunicated persons assist passively at divine services, they need not be rejected.[26]

In the absence of attempted re-marriage and subsequent notorious concubinage, divorce does not constitute the type of notorious delict that requires the denial of Christian burial. Particular legislation could, of course, rule otherwise. Even though not a delict under the general law, the obtaining of a divorce without justifying reason approved by the local Ordinary constitutes a serious sin. If this sin is notorious, the resulting scandal is sufficient to require the denial of Christian burial to the person responsible for it.

[26] Can. 2259, § 2. Si passive assistat [divinis officiis] toleratus [excommunicatus], non est necesse ut expellatur; . . .

It is readily admitted that divorce in itself no longer causes the same kind or amount of scandal as it did formerly. It may still remain in some communities gravely scandalous and there both the unrepaired scandal and the scandal accompanying the concession of Christian burial operate to effect a denial of this right. Even in such communities, however, if no attempt at re-marriage follows divorce, the scandal that it may have caused can easily be diminished by the mere passing of time; this conclusion is all the more warranted if, in the meantime, the offender has been faithful to his religious duties and has publicly received the Sacraments regularly.

Special difficulty may be encountered in the case of a Catholic public official who is publicly known as an enemy of the Church, who has notoriously betrayed the Church, who has usurped the property of the Church, or who, by his sinful life and corrupt dealings, has been a reproach to the Faith he ostensibly professed. A conflict can easily arise in such a case, especially if the deceased is a national figure, between the external and official regret that the Church must express at the public bereavement and the liturgical recommendation to God of the soul of the deceased in Christian burial. Denial of Christian burial might, in the given instance, be publicly regarded as an act of hostility to the government, particularly in a country in which there is found a strong anti-clerical element. In the special case of assassination of the deceased while he is still in office, the deed may well clothe the victim in a martyr's mantle in the eyes of the people and erase the scandal caused by his misdeeds. In a dilemma of this sort, the question resolves itself chiefly into a comparative measurement of scandal against scandal. The harm caused by the refusal of Christian burial may quite possibly be greater than that occasioned by the granting of it. The ecclesiastical authorities can only act according to the demands of the occasion and, as a last resort, choose the less scandalous course.

Even those who are entitled to Christian burial are entitled only to the essential elements that constitute it.[27] Of course, if the denial of accustomed pomp would result in an injury to the reputation of the deceased, it may not be denied. On the other hand, it may be denied in a case in which it would give scandal to grant it, in addition to the bare essentials constituting Christian burial.

It is not without scandal in the usual case that the accustomed pomp is given to those who are reconciled to the Church with their last breath. It is well within the right of a pastor to restrict the ceremonies, in such a case, to the bare essentials of Christian burial and to limit the attendance at the funeral to the members of the family of the deceased. For it is a rule deriving from the natural law itself that scandal, extant or imminent, shall not accompany the ceremonies of burial. This is a rule that must be respected even if it denies Christian burial to those who are not deprived of it by express mention in human law. *A fortiori* it must be respected in the denial of the accustomed pomp that is not an essential element of Christian burial.

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27 Can. 1204. Sepultura ecclesiastica consistit in cadaveris translatione ad ecclesiam, exsequiis super illud in eadem celebratis, illius depositione in loco legitime deputato fidelibus defunctis condendis.

Cases and Studies

A COMPARATIVE GLANCE AT THE LATIN AND THE ORIENTAL MARRIAGE DISCIPLINE

In a motu proprio dated February 22, 1949, the Feast of St. Peter in Antioch, Pope Pius XII published the one hundred and thirty-one Canons of a new marriage law for the Oriental Church, to become effective on the Feast of St. Athanasius, May 2, 1949. The new law adheres closely to the respective canons of *The Code of Canon Law* which became effective for the Latin Church on May 19, 1918, and fulfills the desires frequently expressed during the past forty years that marriage law be made uniform for the entire Catholic world.

In his motu proprio, His Holiness paid particular tribute to the efforts of Cardinal Gasparri to achieve this result, and stressed the great need for uniformity today, when association and marriages between people of different rites is frequent, that uncertainties about the validity of marriage may be removed, and its sanctity safeguarded.

With even more explicit force than the constitution of Pope Benedict XV, *Providentissima Mater Ecclesia* (May 27, 1917), the motu proprio of Pope Pius XII does away with all other statutes, laws and customs, general or particular, unless explicitly retained, so that these newly promulgated Canons will be the only law on the subject of marriage for the faithful of the Eastern Churches.

In reading over the Canons of the new law, numbered in the *Acta Apostolicae Sedis*[1] from 1 to 131, the outstanding impression is the general verbatim adherence to the terminology of Canons 1012 to 1143 of *The Code of Canon Law*. Numerous variations are readily noted, however. The purpose of this study is to indicate what these variations are.

[1] XLI (1949), 89-119.

Variations Based on Oriental Usage

The first and most notable differences, though naturally to be expected, reflect the customs and the nomenclature of the Oriental Churches. These differences are the following:

1. The " Ordinarius loci " becomes the " Hierarcha loci ".
2. The " Vicar General " is the "Syncellus ".
3. The " Diocese " is the " Eparchia ".
4. The Sacrament of Confirmation is " Charisma ".
5. Since historical privileges can not be ruthlessly ignored, Canon 1040 of the Latin Code is omitted and in its place Canon 32 enumerates explicitly the impediments from which the *Hierarcha* and the Patriarch can dispense by the law itself (*ipso iure*), with explicit mention in each case of the continuance of wider faculties which they may have *by privilege* or *particular law.*
6. The engagement (*sponsalitia*) need not be in writing to be valid, as in Canon 1017, but it must be made before the pastor or the *Hierarcha,* or a priest who has received faculties from one or the other—just as for assisting at the marriage itself. The priest who assists at the making of the engagement must enter it in the " engagement book ", and in cases in which custom or liturgical law so prescribe, he must give the proper blessing.
7. Marriage takes place by preference in the parish of the groom rather than the bride (Can. 88, § 3).
8. Sometimes the pastor must have the permission of the *Hierarcha* to assist licitly at marriage (Can. 88, § 2).
9. Special provisions must be made for those who live in a territory in which there is no pastor or *Hierarcha* of their own rite (Can. 86, § 3). For our own practical use here in the United States, we might wish the meaning of this Canon were a little clearer at first reading.
10. The matrimonial impediment of spiritual relationship is more inclusive: it extends to the sponsor and the parents of the person baptized (Can. 70).
11. The pastor or the *Hierarcha,* or the delegate of either, in order to assist at marriage validly, must assist *ritu sacro,* which is obtained " ipso interventu sacerdotis adsistentis ac benedicentis " (Cf. Canons 1094 & 1095).

12. The impediment of consanguinity *in linea collaterali* is called the impediment of consanguinity *in linea obliqua*, and in determining it the degrees of descent of both parties are added to one another ("tot sunt gradus quot personae in *utroque* tractu, stipite dempto") (Can. 66). Consequently the impediment forbids matrimony to the sixth degree of the collateral line ("usque ad *sextum* gradum inclusive"), which equals our *third*.

13. The impediment of affinity is complicated. It is contracted *ex digeneia* et *ex trigeneia!* The husband's relatives are related by affinity to the wife's relatives; and when a woman has two successive husbands, her "affinities" by her first marriage become similarly related to her second husband. The same is true, of course, in the case of a man who has two successive wives. Charts of family trees are assuredly indispensable to avoid error in ascertaining the presence of this impediment.

14. Canon 62 gives an interesting clarification of the effect of the subdiaconate as an invalidating impediment to marriage. It has the same effect as a *major order*.

15. Banns are to be published only if particular law requires it ("iure particulari id ferente"). If the publication is required, the circumstances of publication must be in accord with norms which are also those of the Latin Code.

16. As regards fees for dispensations, the *nisi* clause of Canon 1056 of the Latin Code is augmented in Canon 46 by the recognition of synodal authorization ("aut id sit in probatis Synodis constitutum vel recognitum"). The Sacred Congregation of the Council has refused to approve a schedule of fees drawn up by a Provincial Council of the Latin Church which permitted local Ordinaries to fix rates within a maximum and a minimum established by the particular Council.[2]

17. All marriages are to take place in church. Paragraph 3 of Canon 1109 of the Latin Code is omitted entirely from Canon 98, as are the words "inter catholicos" in paragraph 1. Hence, in regard to the place in which the ceremony of marriage must occur, there is no exception for mixed marriages. Similarly Canon 1102 of the Latin Code, which prohibits "sacred rites" in mixed mar-

[2] Cf. S.C.C., resol. 11 dec. 1920—*AAS*, XIII (1921), 350; Bouscaren, *The Canon Law Digest*, I, 720, 721.

riage is omitted, since it has been supplanted by the general requirement of Canon 85 that a *sacred rite* is required for the valid assistance at any marriage.

18. Canon 1101 of the Latin Code regarding the *nuptial blessing* is omitted.

19. Eastern discipline regarding clerical celibacy causes omission of the *nisi* clause of Canon 1114.

Variations Concerning Conditional Consent, Disparity of Cult, and Coercion

Besides the accommodations to Oriental custom and liturgy, several other noteworthy departures from the law of the Latin Code appear in the Oriental Code. They are the following:

1. Canon 1092 is replaced by the terse statement of Canon 83: "Matrimonium sub condicione contrahi nequit". Thus conditional consent is denied any recognition whatsoever.

2. The impediment of disparity of cult is simply stated, without condition or exception: "Nullum est matrimonium contractum a persona non baptizata cum persona baptizata".

At first one may be inclined to hope that this may presage a return also of the Latin discipline to its pre-Code status regarding the impediment of disparity of cult, a return which would solve the most vexing and laborious problem of our matrimonial officials. But it is not necessarily so. This law has force only for "*Christifidelibus Ecclesiae Orientalis*," and the Sacred Congregation for the Oriental Church had in a private response to a particular case, on August 22, 1937, clearly implied the principle that dissidents of the Eastern Churches were bound to the impediment, and this in spite of the private response of the Code Commission on December 3, 1919, to the Vicar Apostolic of Natal.[3]

At least one should be justified in considering this as an official statement of the obligation of all members of the Eastern Churches (schismatic as well as Catholic) to observe the impediment of *disparity of cult*.

[3] Cf. Gulovich, "The Principle Underlying the Validity of Oriental Marriage Law"—The Jurist, VI (1946), 39-49; cf. private response of the Cardinal President of the Code Commission, 3 dec. 1919—Bouscaren, *The Canon Law Digest*, II, 337.

3. The carefully worded phrase regarding coercion in Canon 1087 of the Latin Code: " a quo ut quis se liberet, eligere cogatur matrimonium ", by which the Latin discipline attempted a compromise in a famous controversy, has been completely deleted in Canon 78, in favor of the phrase " ad extorquendum consensum ", which definitely canonizes, at least for the Oriental Churches, the ancient opinion of Sanchez, D'Annibale, De Angelis, S. Alphonsus, and Wernz; and may well serve as authority for those post-Code commentators who claim that the Latin Code actually accomplished no compromise at all, but that even under its provision intimidation, if it was to be regarded as externally effected (" ab externo "), needed to be intended precisely to extort matrimonial consent[4] (" ad extorquendum consensum ").

The Comma of Canon 1099, § 2

As was to be expected, the law of the Oriental Code embodies the one change which has been made in the law of the Latin Code since its promulgation: the elimination of the latter half of Canon 1099, § 2, commencing with the word, " *item ab acatholicis nati* ". Consequently the law of *obligation to* and *exemption from* the Catholic form of marriage is now exactly the same for Catholics of both the East and the West.

Naturally the third part of paragraph 1, of Canon 1099 of the Latin Code, pertaining to Orientals is omitted. Presumably it is no longer needed in the Latin Code. But the question is certainly going to arise about the necessity of the sacred rite (" *ritu sacro* ") in the case of a marriage of mixed rites. Canon 85 obliges the member of the Oriental rite to observe it; Canon 1094 does not similarly oblige the member of the Latin rite. The answer is not readily apparent in spite of Canon 88, § 3, of the Oriental Code.

Incorporation of Interpretations of the Code Commission

Authoritative interpretations by the Pontifical Commission for the Interpretation of the Canons of the Code, rendered since the promulgation of the Latin Code, have clarified various doubts con-

[4] Cf. Gasparri, *Tractatus Canonicus de Matrimonio* (2 vols., Romae, 1932), II, 856, for an interesting discussion of the origin of our phrase, which he credits to P. Palmieri.

cerning marriage discipline. These interpretations have now been generally written into the text of the Oriental Code. The following examples deserve mention even in this brief report.

1. Canon 1037 was interpreted in a response of June 25, 1932, stating that an impediment was public if the fact from which it arose was public.[5] Hence Canon 27 of the Oriental Code reads: "Publicum censetur impedimentum quod *publico ex facto oritur*, etc."

2. In an answer of November 12, 1922, the Code Commission made it clear that for the purposes of Canon 1044 the telephone and telegraph might be considered as never invented.[6] Hence Canon 34 has a second paragraph: "Hierarcha censetur adiri non posse, *si tantum per telegraphum vel telephonum ad eum possit recurri.*"

3. That well known phrase of Canon 1045: "Quoties impedimentum detegatur, cum iam omnia sunt parata ad nuptias", received necessary clarification on March 1, 1921. "Detegatur" really means, in virtue of that interpretation, revealed or reported to the pastor or the Ordinary.[7] So Canon 35, § 1, has the phrase: "quoties impedimentum detegatur vel, *quamvis antea cognitum, tunc solum ad notitiam Hierarchae aut parochi deferatur* cum iam omnia sunt parata, etc."

4. The third paragraph of this same Canon 1045 of the Latin Code also received clarification on December 28, 1927, when "pro casibus occultis" was stated to include impediments *which are by nature public but in fact occult.*[8] Consequently, paragraph 3 of Canon 35 reads, "sed solum si casus natura sua *vel tantum facto* sit occultus".

5. Canon 1096 has been frequently confusing to canonists as well as pastors. On May 20, 1923[9] the Code Commission gave a

[5] Code Commission, 25 iun. 1932—*AAS*, XXIV (1932), 284; Bouscaren, *The Canon Law Digest*, I, 501.

[6] Code Commission, 12 nov. 1922, V—AAS, XIV (1922), 662; Bouscaren, *The Canon Law Digest*, I, 502.

[7] Code Commission, 1 mart. 1921—*AAS*, XIII (1921), 177; Bouscaren, *The Canon Law Digest*, I, 502.

[8] Code Commission, 28 dec. 1927, III—*AAS*, XX (1928), 61; Bouscaren, *The Canon Law Digest*, I, 503.

[9] Code Commission, 20 maii 1923, V, VI—*AAS*, XVI (1924), 114, 115; Bouscaren, *The Canon Law Digest*, I, 540, 541.

whole series of responses on it, and followed them with others on December 28, 1927.[10] Some of these find their way into Canon 87, particularly as regards the *assistant,* who can be given general delegation and can *sub-delegate;* and the delegation of a particular priest for a particular marriage, *with the right of subdelegation* for that particular marriage.

Canon 1098 received three responses,[11] but apparently the text is still considered sufficiently clear without them, because no changes are found in the corresponding Canon 90 of the Oriental Code.

Further Clarifications

Besides the inclusion of official interpretations of the Code Commission, there have been introduced into the Oriental Code a few other changes for the purpose of clarification or interpretation.

1. The most notable of these is in the definition of *matrimonium putativum* in Canon 4, § 4, in which marriage in the Church is postulated as a requisite ("si in bona fide ab una saltem parte celebratum fuerit *coram Ecclesia*") (cf. Canon 1015, § 4). Commentators on the Latin Code had all seemed to agree that this was a necessary requisite.

2. That troublesome and confusing term *licentia* of Canon 1096 has disappeared and in its place Canon 87 substitutes the word *facultas,* stating very clearly: "Parochus et loci Hierarcha . . . possunt quoque alii sacerdoti *facultatem* dare ut intra fines sui territorii determinato matrimonio assistat, dummodo id expresse faciant, et sacerdos sit determinatus, etc."

The same word *facultas* is used in Canon 85: "Ea tantum matrimonia valida sunt quae contrahuntur ritu sacro, coram parocho vel loci Hierarcha, vel sacerdote *cui ab alterutro facta sit facultas matrimonio assistendi,* etc." The use of this term does away with the ambiguity of the terminology as it appears in Canons 1094, 1096 and 1097; for the phrase used in Canon 1094, *ab alterutro delegato*

[10] Code Commission, 28 dec. 1927, IV, 1, 2,—*AAS,* XX (1928), 61, 62; Bouscaren, *The Canon Law Digest,* I, 541.

[11] Cf. Code Commission, 10 nov. 1925, VIII—*AAS,* XVII (1925), 583; 10 mart. 1928, I—*AAS,* XX (1928), 120; 25 iul. 1931—*AAS,* XXIII (1931), 388; Bouscaren, *The Canon Law Digest,* I, 542.

re-appears as *licentia assistendi* in Canon 1096, only to be confused with a quite different *licentia* in Canon 1097.

This clear and consistent use of the word *facultas* leaves the word *licentia* for use in Canon 88, where it appears in its own proper sense, without confusion, and even permits it to be substituted for the "*permissio* celebrationis matrimonii conscientiae" of Canon 1105 of the Latin Code.

3. The maximum and minimum terms establishing the presumption of legitimacy are made more precise. Instead of the *post sex menses* of Canon 1115, Canon 104 of the Oriental Code substitutes *post centum octoginta dies* and for *intra decem menses, intra tercentos dies.*

4. Canon 80 discourages marriage by proxy much more forcibly than Canon 1091 of the Latin Code; it reads: "Matrimonium contrahi nequit per procuratorem, nisi Hierarcha loci in casu singulari hanc facultatem scripto dederit."

Better Latin

Paradoxically the Greek Church will have a slightly better Latin text, in some instances, than the Church of the Latin Rite. Occasionally textual obscurities have been clarified or clumsy phrases simplified. In a few instances, more appropriate terms have been used. But sometimes the variation seems nothing more than a matter of taste; now and then the improvement might be questioned.

The outstanding instance of improved terminology is that already mentioned: the substitution of *facultas* for *licentia* in Canon 1096, and the consistent use of the same word in place of "*delegato*" in Canon 1094.

To be greeted with equal enthusiasm is use of the name *impedimentum prohibens* for our redundant *impedimentum impediens.* The meaning is more readily apparent and the contrast with *dirimens* more evident. This change of name necessitated a change in the wording of the law as it appears in Canon 1036. The rules of definition would not permit: Impedimentum *prohibens* continet gravem *prohibitionem.* So Canon 26 reads: "Impedimentum *prohibens* secumfert grave vetitum".

A good example of the simplification of a complicated phrase is found in Canon 90, § 2, which makes one subject do the work of the two that are employed in Canon 1099.

The reason for a change in adjective to make the term "*sanctissimam* Eucharistiam" of Canon 1033 read "*divinam* Eucharistiam" in Canon 23 is not readily apparent, at least to one unfamiliar with Eastern customs and terminology.

The most notable instance of textual clarification is in Canon 1020. Possibly good Latin scholars never did think that *huiusmodi* modified *parochi,* the word which it precedes. But the new word-order in Canon 10 with its *investigatione huiusmodi* definitely points to the investigation rather than the pastor as the noun that is thus qualified.

One instance in which the literary change hardly seems to improve clarity is in the second paragraph of Canon 18. The corresponding paragraph of Canon 1028 uses a few more words, but it doesn't demand of the reader that he look back three lines and over a semi-colon to find the infinitive modified by a concluding genitive.

Likewise the change in the third paragraph of Canon 26 required a second reading before rendering the familiar clarity of Canon 1036. Moreover, the reason for the use of *ad modum legis* instead of *per modum legis* in Canon 1038 is not readily apparent. But the substitution of *impletione* for *implemento* in Canon 1061 is undoubtedly an improvement; and it seems more forthright, if less traditional, to dispense *ab impedimento* (Canon 33) than *super impedimento* (Canon 1043).

Certain other variations are set forth in the following without comment. Canon 1083 deals with "*Error circa personam*" and "*Error circa qualitatem personae*"; Canon 74 prefers *in* with the ablative. Canon 93 prefers *tantum* to the *nonnisi* of Canon 1104. Canon 95 breaks the long sentence of Canon 1106 into numbered paragraphs. Canon 113 prefers *coniugaliter* to the *matrimonialiter* of Canon 1124.

The Oriental Code commendably omits the statement of the obvious. It omits, for example, the first paragraph of Canon 1042 and the final phrase, *minime vero,* of Canon 1053. It also finds the *item* of Canon 1073 superfluous. But it does not hesitate to insert *tutela* for the purpose of clarity in Canons 1059 and 1080 (or is this possibly done to complement the meaning of *cognatio legalis?* See Can. 31, § 1, n. 5).

This comparative glance at the canons of the Oriental Code relating to marriage, though fragmentary as the limitations of time

have compelled the writer to make it, clearly demonstrates the thoroughness with which the difficult field has been traversed and radiates the assurance that its beneficent results will, if possible, exceed those our Holy Father hopes for. If the excellence of this Code is a measure of that which characterizes the codification of the entire Oriental law, all canonists must note with pleasure and anticipation the promise of His Holiness that we have not long to wait for the appearance of the complete Code for the Eastern Churches.

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FACULTIES FOR THE CELEBRATION OF MASS

1. May any diocesan priest, with the permission of his bishop, use the portable altar within the limits of his diocese (e.g., at Boy Scout overnight hikes on Sunday, etc.)?

2. If a priest who has the portable altar privilege is vacationing in another diocese, must he obtain the *licentia* of the *ordinarius loci?*

3. A priest celebrating on shipboard at anchorage on an inland lake with a calm sea wonders if he needs:

a) Authorization from the Apostolic Delegate;

b) permission from the *ordinarius loci;*

c) the usual *presbyter assistens* (or priest "standing by")?

4. Does a life membership in the Catholic Near East Welfare Association carry with it the privilege of the portable altar?

5. May an ex-army chaplain who had permission to use the Greek corporal, and who enjoys still the privilege of the portable altar, use the Greek corporal in lieu of an altar stone, or must he obtain special permission for the use of the Greek corporal?

Sperans

Can. 822, § 1.—Missa celebranda est super altare consecratum et in ecclesia vel oratorio consecrato aut benedicto ad normam iuris, salvo praescripto can. 1196.

§ 2.—Privilegium *altaris portatilis* vel iure vel indulto Sedis tantum Apostolicae conceditur.

§ 3.—Hoc privilegium ita intelligendum est, ut secumferat facultatem ubique celebrandi, honesto tamen ac decenti loco et super petram sacram, non autem in mari.

§ 4.—Loci Ordinarius aut, si agatur de domo religionis exemptae, Superior maior, licentiam celebrandi extra ecclesiam et oratorium super petram sacram et decenti loco, nunquam autem in cubiculo, concedere potest iusta tantum ac rationabili de causa, in aliquo extraordinario casu et per modum actus.

Can. 1196, § 1.—Oratoria domestica nec consecrari nec benedici possunt more ecclesiarum.

§ 2.—Licet oratoria domestica et semi-publica communi locorum domorumve benedictione aut nulla benedictione donentur, debent tamen esse divino tantum cultui reservata et ab omnibus domesticis usibus libera.

Can. 1249.—Legi de audiendo Sacro satisfacit qui Missae adest quocumque catholico rito celebretur, sub dio aut in quacumque ecclesia vel oratorio publico aut semi-publico et in privatis coemeteriorum aediculis de quibus in can. 1190, non vero in aliis oratoriis privatis, nisi hoc privilegium a Sede Apostolica concessum fuerit.

Can. 200, § 1.—Potestas iurisdictionis ordinaria et ad universitatem negotiorum delegata, late interpretanda est; alia quaelibet stricte; cui tamen delegata potestas est, ea quoque intelliguntur concessa, sine quibus eadem exerceri non posset.

"Privilegium altaris portabilis tempore vacationum, cum consensu proprii Ordinarii, sine ullo praeiudicio iurium parochorum et dummodo altare erigatur honesto ac decenti loco."—Privilege granted to special and perpetual members of the Missionary Union of the Clergy in the United States of America by His Holiness Pope Pius XI at the request of His Excellency, the Most Reverend Amleto Giovanni Cicognani, Archbishop of Laodicea and Apostolic Delegate to the United States, in an audience on August 22, 1936, and communicable by him over a period of five years, whereafter the privilege was not renewed.

"Concedendi, quoties necessitas urgeat et non suppetat tempus recurrendi ad S. Sedem:

5° facultatem sacerdotibus navigantibus, sive in mari sive in fluminibus, Missam in navi celebrandi super altare portatile, dummodo locus in quo Missa celebretur nihil indecens aut indecorum praeseferat et periculum absit calicis effusionis."—Faculty of the Apostolic Delegate.

S.C.S.Off., 23 aug. 1905: "Sacerdotes quoscumque maritimum iter arripientes, dummodo a proprio Ordinario, ex cuius dioecesi discedunt; vel ab Ordinario portus, in quo in navem conscendunt; vel etiam ab Ordinario portus cuiuslibet intermedii, per quem in itinere transeunt, sacramentales confessiones excipiendi, quia digni scilicet atque idonei recogniti ad tramitem Conc. Trid. Sess. XXIII, cap. XV de Reform., facultatem habeant vel obtineant; posse toto itinere maritimo durante, sed in navi tantum, quorumcumque fidelium secum navigantium confessiones excipere, quamvis inter ipsum iter navis transeat, vel etiam aliquamdiu consistat diversis in locis, diversorum Ordinariorum iurisdictioni subiectis."—SSmus approbavit.

S.C.S.Off., 13 dec. 1906: "Supplicandum SSmo ut concedere dignetur sacerdotes navigantes, de quibus supra, quoties, durante itinere, navis consistat, confessiones excipere posse tum fidelium qui quavis ex causa ad navem accedant, tum eorum qui, ipsis forte in terram obiter descendentibus confiteri

petant, eosque valide ac licite absolvere posse etiam a casibus Ordinario loci forte reservatis, dummodo tamen, *quod ad secundum casum spectat,* nullus in loco vel unicus tantum sit sacerdos adprobatus, et facile loci Ordinarius adiri nequeat."—SSmus annuit iuxta Emorum PP. suffragia.—*Collectanea* (Romae, 1907), n. 2244, and footnote.

S.C.de Prop. Fide, litt. (Vic. Ap. Congi Superioris), 27 iun. 1914: ". . . postulationi quam nunc renovas satis provisum est per litteras diei 23 elapsi mensis martii, ad 2um, cum Sanctissimus Dominus noster declaraverit extensa ad fluvios lacusque istius regionis decreta supremae Inquisitionis, die 23 aug. 1905 et 13 dec. 1906 edita, circa maritimam navigationem.

" Omnes igitur sacerdotes ab istarum missionum Ordinariis adprobati et ad praedictas insulas pervenientes, poterunt ibidem sacramentales confessiones excipere, iuxta ea quae in altero ex citatis decretis de sacerdote in terram obiter descendente statuta sunt."—*Sylloge* (Typis Polyglottis Vaticanis, 1939), n. 51; Bouscaren, *The Canon Law Digest* (2 vols., Milwaukee: Bruce, 1934, 1943) II, 219.

" The privilege of the portable altar, for the celebration of Mass at home, in times of infirm health or of convalescence."—Privilege granted to priest members of the Catholic Near East Welfare Association as perpetual or annual members enrolled before April 21, 1945, and as perpetual members enrolled thereafter.

" Sanctissimus Dominus Noster . . . benigne annuere pro gratia iuxta preces dignatus est [scil., privilegio . . . pro cappellanis castrensibus utendi loco altaris portatilis in celebratione Missae, velo cum inclusis Reliquiis ab Episcopo recognitis] "—Indult to the Military Ordinary of North America, 26 febr. 1943.

" The privilege of celebrating Mass in churches of the Byzantine rite on the Greek corporal (*super antimensiis Graecorum*)."—Privilege granted to priest members of the Catholic Near East Welfare Association.

In matters of granted privileges or faculties it is necessary to attend to the very wording in which the privilege or the faculty is granted. It is for this reason that there appears at the head of this reply a listing of the various faculties and privileges of which there is question.

1. The bishop of the diocese is empowered within the limits indicated in canon 822 to allow the celebration of Mass on a portable altar. The faculty he thus possesses constitutes part and parcel of the ordinary powers that attach to his office.[1] In consequence he

[1] Cf. S.C.de Sacramentis, *Romana et Aliarum,* 3 maii 1926, *Annotationes—Acta Apostolicae Sedis,* XVIII (1926), 389-391; Bouscaren, *The Canon Law Digest,* I, 387-390; cf. also THE JURIST, " Cases and Studies," II (1942), 155-158.

can by way of delegation share this faculty with others for use by them whenever the postulated circumstances, as listed in canon 822, § 4, are duly verified. If a continuous need for the celebration of Mass on a portable altar came into question, then it were a more acceptable procedure either for the priest to obtain the privilege of the use of the portable altar, or for the local ordinary to obtain the faculty which will allow him to permit a priest the use of the portable altar not only *per modum actus*, but also *per modum habitus*.

Canon 822, § 4, does not set any restriction relative to the days for which the local ordinary can allow the use of the portable altar in some extraordinary situation by way of individual grant. One may accordingly ask whether it is within his power to allow the faithful to attend Mass under these circumstances with the assurance that they are also fulfilling their Sunday obligation, which normally demands that they assist at Mass celebrated in a church, in a public or a semi-public oratory, or *sub dio*. It can be safely maintained that, lest the ordinary's permission prove futile in achieving the purpose for which it is granted, it contains also a dispensation from the observance of the requisite place, so that at least all those of the faithful whose necessity motivated the granting of the permission can fulfill the precept in any place where the permitted Mass is celebrated.[2]

2. It is to be noted that the privilege of the portable altar was granted exclusively to perpetual and special members during the five-year period from August 22, 1936, to August 22, 1941. Those who became perpetual members during that period continue to enjoy the privilege at the present. Those who became special members enjoyed the privilege for the remainder of the five-year period, but not thereafter.

The condition for the use of the privilege was the consent of the proper ordinary. This called for the previous consent of the diocesan ordinary on the part of secular priests, and the consent of the religious ordinary on the part of exempt religious. That consent could be given by the ordinary not only through his approval of the

[2] Cf. Bouscaren, "De missa ex licentia Ordinarii celebrata," *Periodica de re morali, canonica, liturgica*, XXVIII (1939), 52-61; Guiniven, *The Precept of Hearing Mass*, The Catholic University of America Canon Law Studies, n. 158 (Washington, D.C.: The Catholic University of America Press, 1942), pp. 124-126.

use of the obtained privilege, but also through his prior general encouragement to obtain perpetual or special membership in the Missionary Union of the Clergy. In the former case the consent was given explicitly, while in the latter case it was granted implicitly. Either form of consent sufficed, and there was likewise no need that the consent be given in writing, for no such condition was set. It was further required in the use of the portable altar that all pastoral rights be duly respected, and that the altar be set up in an appropriate and respectable place.

If the use of the portable altar derives through an apostolic indult which allows the celebration of Mass in a domestic oratory, then the conditions expressed in canon 1195, § 1, must be verified, so that only for just and reasonable causes in addition to the ones which motivated the indult itself will the local ordinary be warranted in granting individual permission for the celebration of Mass even on the more solemn feasts. When such permission has been granted by the ordinary, then one may rightfully conclude that those who are in attendance at the Mass can fulfill also their obligation of assisting at Mass in accord with the Sunday and Holy Day obligation.

3. The texts of the documents quoted above make it evident that the need of authorization for the celebrating of Mass on a voyage at sea is equally applicable for the celebration of Mass on inland lakes and streams. First of all, the faculty as possessed by the Apostolic Delegate makes express mention of rivers along with its mention of the sea or the ocean. It is not to be assumed that a faculty incorporates mention of a matter for the enjoyment of which no special concession is required. Hence there is need for authorization in the celebration of Mass whether the Mass is to be celebrated on a river boat, a lake steamer, or an ocean liner.

It is also the more common doctrine that any priest who voyages on an ocean liner will still have need of special authorization for the celebration of Mass even though the liner be fitted out with a permanent semi-public oratory. The reason is simply this: As long as the celebration of the Mass is prohibited in view of an existing general danger, the individual may not abstract from the law despite the absence of all danger in a given case.[3] The proper proce-

[3] Can. 21.—Leges latae ad praecavendum periculum generale, urgent, etiamsi in casu peculiari periculum non adsit.

dure is that of obtaining the called for authorization, which in effect redounds to a dispensation from the normal requirement of the law.

A further corroboration of the foregoing is deducible from the fact that the granted special faculty of hearing confessions on an ocean voyage is applicable also for the hearing of confessions on lake and river trips. Canon 883, § 1, is a substantial restatement of the decree which the Holy Office issued on August 23, 1905, as quoted above, and canon 883, § 2, is a similar restatement of the decree of December 13, 1906, likewise quoted above, though the added *dummodo* clause there incorporated is not mitigated to the extent that the voyaging confessor's faculties continue available for use in a port for a period of three days, so that only thereafter does it become necessary to approach the local ordinary for continued faculties if he can be easily reached.[4]

Now, if in the enjoyment of a special confessional jurisdiction lake and river trips are likened to an ocean voyage, then it follows quite naturally that in the requisite faculty for the celebration of Mass a similar rule should obtain as long as the granted authorization does not furnish any indication to the contrary. The argument has at least a corroborative value through the fact that canon 20 indicates the adoption of a norm which derives from legislation *in similibus* whenever an expressly stated rule is lacking in the law regarding the specific point in question. If the law is to be harmoniously integrated, then it is precisely this norm that serves to fill whatever lacuna may exist.

The wording in the faculty possessed by the Apostolic Delegate stresses two points for the priest who has become authorized to say Mass *sive in mari sive in fluminibus*. The place in which the altar is to be erected must not reflect anything that borders on what is not respectable or decorous, and there likewise must not be any danger of the spilling of the chalice. There is no specific mention that an additional priest must be in intimate attendance at the altar the while Mass is being celebrated. Consequently, in the absence of all danger no such services are required. If any danger is present, then the general precaution that is called for may make

[4] Pontificia Commissio Interpretationis, 20 maii 1923, ad IV—*Acta Apostolicae Sedis*, XVI (1924), 114.

such attendance necessary, or it may altogether rule out the possibility of celebration even with the presence of an attending priest.

4. Before April 21, 1945, no distinction existed between life membership and ordinary membership in the Catholic Near East Welfare Association relative to the privilege of the portable altar. In either case the privilege was of a limited character, since it was made available for members only in times of infirm health or of convalescence. Since April 21, 1945, it is only perpetual members who enjoy this privilege, and under the same limitative conditions.

5. To all priest members of the Catholic Near East Welfare Association there is now granted "the privilege of celebrating Mass in churches of the Byzantine rite on the Greek corporal." The limited character of this privilege is readily seen from its restrictive wording. But the privilege applies to all priest members alike, regardless of whatever station a priest may hold.

During the war permission was granted to military chaplains in the armed forces to offer Mass without an altar stone, using instead an *antimensium* or veil containing episcopally authenticated relics of the saints sewn into it. While this faculty had in its time a very substantial application, it is clear from the given case that there is lacking the very condition which alone could leave room for its application.

The faculty evidently had application only during the time of actual service, for it was postulated that the chaplain be in the armed forces, which condition automatically ceased with the cessation of active service. Accordingly it seems that this faculty is now no longer applicable for any of the ex-chaplains, even if they be officially retained on the reserve officers' list. If in individual cases some ex-chaplains still are authorized to offer Mass on the Greek corporal, then their right to do so derives from some source other than that which obtained for them during active service.

Apart from membership in the Catholic Near East Welfare Association there is no association or union through which, in the knowledge of the writer, there is automatically granted the use of the Greek corporal to priests who pertain to the Latin rite. If such a privilege is held by any priest of the Latin rite, then in all likelihood he holds it in consequence of some very special grant through an apostolic indult or concession.

INTERIM RULE OF PARISH

If, according to whatever allowable provision exists, a priest has taken over the government of a vacant parish before the appointment of a parochial administrator (*vicarius oeconomus*), does he possess an ecclesiastical office invested with ordinary parochial power? Has he the obligation of applying the *missa pro populo* until the administrator has supplanted him?

ILLUMINANDUS

Can. 472, 2°.—Vacante paroecia, ante oeconomi constitutionem, paroeciae regimen, nisi aliter provisum fuerit, assumat interim vicarius cooperator; si plures vicarii sint, primus; si omnes aequales, munere antiquior; si vicarii desint, parochus vicinior; si tandem agatur de paroecia religiosis concredita, domus Superior; loci autem Ordinarius in Synodo vel extra Synodum tempestive determinet quaenam paroecia cuique paroeciae vicinior habenda sit;

3°.—Qui paroeciae regimen ad normam n. 2 assumpsit, debet loci Ordinarium de paroeciae vacatione statim certiorem facere.

The very structure of canon 472, 2°, points to a rule which is of a supplementary rather than of an absolute character—*nisi aliter provisum fuerit.* But the *nisi* clause itself seems open to two possible interpretations according as the auxiliary form *fuerit* is taken either as a future perfect indicative or as a perfect subjunctive. In the former assumption the ordinary is definitely free to use his own discretion in making opportune provision for the rule of the vacant parish. In the latter assumption one could expect the supplementary rule of the Code to stand as long as no prior provision of a different character was made. Yet, even in this latter assumption it hardly appears convincing that the Code would demand compliance with its supplementary law if immediately upon the vacancy opportune provision can be made by the ordinary in some other way. The law appears to bind as a norm only in the event that in no other way the ordinary sees fit to make due and suitable provision.

It appears altogether admissible for the ordinary to have the rural deans share in his power to make the interim appointment. If he has done so by means of a synodal statute or extra-synodal ruling, then this manner of provision surely supplants the supplementary norm which canon 472, 2°, would otherwise make binding. But it likewise seems permissible for the ordinary to demand an immediate report by telephone regarding the pastor's death, upon which the ordinary can then make all needed provision. If he has

made such a ruling, it does not seem to be stretching the natural acceptation of language to say that he has done what is necessary for the verification of the *nisi* clause in the given case.

Canon 472, 2°, indicates the legislator's desire that there will immediately ensue at least a transitory arrangement which makes a definite person responsible in the duties which derive from the parish. Canon 472, 3°, reflects the desire of the legislator for some further arrangement which, if it cannot be permanent, will at least be of a relatively less provisional character, but which will likewise designate a specific priest as the person responsibly in charge.

Responsibility postulates the possession of the powers through the use of which the responsibility can be met. While the possession of delegated powers can in many instances suffice, yet the universally suitable means is the possession of ordinary power. In the absence of any specific contrary ruling one must assume that the legislator has chosen the best suited means for the achieving of this purpose. Hence, just as the parochial administrator or vicar substitute in a parish holds an office, which permits him to function with ordinary power, so too the one temporarily in charge until the administrator takes office will do his work in virtue of his transient parochial office.

From this it follows naturally that the interim incumbent for the government of the parish will have also the obligations which attach to the pastoral office. It may be impossible to call upon some other priest in the diocese immediately to enter upon the office of administrator in the parish. In that event the obligation of the *missa pro populo* must not under any consideration be defaulted. The only way in which to guard against such a defaulting is to acknowledge for the interim incumbent the pastoral obligation of the *missa pro populo,* for otherwise no one could in strict law be called upon for its fulfillment. The interim parochial incumbent's possession of the pastoral office, transient though it be, and his corresponding obligation of applying the *missa pro populo* are such natural corollaries of the Church's sovereign law—*salus animarum suprema lex*—that one finds unanimity among all the authors who have specifically considered this question.

CLEMENT V. BASTNAGEL

THE CATHOLIC UNIVERSITY OF AMERICA

PROVINCIALS INCORPORATED

A Catholic donor desires to incorporate all the provincials of our institute in the United States to control a fund the income of which is to be divided proportionately among the provinces for the work carried on by them. Is it lawful for them to permit themselves to be so incorporated?

INVOLUTUS

This plan could be compared to one by which several provincials would establish an apparatus for buying large quantities of supplies needed by all with the purpose of obtaining the advantages resulting from wholesale buying. The provincials would, in this case, need the advice or the consent of others within their institute as required by their constitutions in the case of extraordinary administration. For there seems no doubt that a plan of this kind exceeds the bounds of ordinary administration.

If there were no problem of warehouse storing and if the bills were submitted by the vendors directly to the respective consuming units and paid by the latter, one might concede that only ordinary administration was involved. The vendor's reduction in price in such a case would be based almost entirely on the monopoly he has acquired with reference to the purchases of the respective provinces.

In any case, the provinces cannot make a profit out of the re-sale of the goods to the local houses, for this would constitute forbidden merchandising.

It is possible that the constitutions might forbid such an economic combination of provinces. But in the absence of such a prohibition, a combination on the economic level does not equate a union on the juridical level. In other words, the combination of the provinces for the purposes of buying does not establish a juridical unit intervening between the provinces themselves and the institute at large.

Since the individual provincials can accept a foundation in accordance with the terms of canons 1544-1551, there seems no reason why a group of provincials cannot accept a group foundation. Such a foundation does not square adequately with the juridical concept of a foundation, since the latter is conceived as a fund given to an ecclesiastical moral person. However, the provincials can be regarded as obtaining a common fiduciary control of the fund for the proportionate benefit of their respective provinces. In doing so,

they are not establishing a new ecclesiastical moral person intermediate between the province and the institute. The fact that their fiduciary relationship is to be exercised through a corporation chartered by secular authority does not alter the juridical situation in its canonical aspects.

The provincials must see to it, however, that their only function and responsibility in accepting the administration of the fund is to carry out the will of the donor in the investment of the fund and in the use of the income derived from it. If the present holdings of the provinces are jeopardized in any way, even to the extent of guaranteeing a payment or a forfeiture of any kind to the donor or his heirs or his assigns, the intervention of the Holy See is an essential prerequisite within the terms of canon 1532, § 1.

A LEGALLY INFAMOUS SPONSOR

In a parish lives a certain couple, John and Mary, both Catholics, who attempted marriage while John's lawful wife was still alive. The fact of this bigamous union is common knowledge among most of the parishioners. John's wife has recently died, and the pastor is making preparations to validate the marriage. John's brother wants John to act as sponsor at the baptism of his newly-born son, but the pastor does not think that John may do this lawfully because he incurred infamy of law by his bigamous union. He wonders whether anything can be done to remove the infamy of law at the same time that the necessary dispensations are obtained for the validation of the marriage.

SAXATILIS

That an indult is required for the dispensation from public infamy of law (*infamia iuris*) is placed beyond dispute by the very explicit terms of canon 2295.[1] Moreover, canon 2237, § 1, 3°, explicitly excludes the power of granting this dispensation from the competence of the Ordinary.[2] This exclusion does not occur in canon 2237, § 2, which confers on the Ordinary powers in occult cases and it is a warranted conclusion that if the infamy is occult the Ordi-

[1] Can. 2295. Infamia iuris desinit sola dispensatione a Sede Apostolica concessa; . . .

[2] Can. 2237, § 1. In casibus publicis potest Ordinarius poenas latae sententiae iure communi statutas remittere, exceptis: . . . 3° Poenis . . . infamiae iuris . . .

nary is authorized to grant the dispensation.[3] From the nature of such cases it is evident that this power extends only to the internal forum.[4]

An occult case is not the same as an occult delict, for it is possible that the delict should seem to be public and the penalty nevertheless should remain occult. If the penalty is here and now public, the case cannot be regarded as occult;[5] but if the penalty is here and now occult, the delict, even though it seems to be public, is regarded as formally occult[6] and the case is an occult one.

If, therefore, the fact that the penalty of legal infamy has been incurred is known only to a few persons who do not intend to reveal it and who are not likely to be compelled to do so,[7] one should regard the case as an occult case, i.e., one in which the Ordinary can grant a dispensation for the internal forum. This suffices for the conscience of the delinquent who is thus enabled to act until the authorities in the external forum prevent him from doing so. This they can do only in a case that is notorious. Indeed, in the case of sponsorship at baptism, it is required by canon 766, 2°, for the exclusion of the prospective legally infamous sponsor, that the legal infamy be the result of a *notorious,* not merely a public, delict, i.e., a delict that is in every respect publicly known as unconcealable and inexcusable.[8] Thus even aside from dispensation a person cannot be excluded from acting as sponsor at baptism unless the delict for which he has incurred legal infamy is notorious.

The facts of the given case indicate that a delict has been committed which the law visits with legal infamy,[9] and that the delict

[3] Cf. Ayrinhac, *Penal Legislation in the New Code of Canon Law* (revised edition, New York: Benziger Brothers, 1936), n. 161.

[4] Cf. Blat, *Commentarium Textus Codicis Iuris Canonici,* Lib. V, *De Delictis et Poenis* (Romae: Collegio "Angelico", 1924), n. 59.

[5] Cf. Berutti, *Institutiones Iuris Canonici,* Vol. VI, *De Delictis et Poenis* (Taurini-Romae: Marietti, 1938), n. 38, IV, 4; n. 86, II, p. 216, note 2.

[6] Cf. Coronata, *Institutiones Iuris Canonici* (5 vols., Taurini: Marietti, 1928-1936), IV, n. 1648; Blat, *ibid.,* n. 120.

[7] Cf. Berutti, *ibid.,* n. 3, III.

[8] Cf. can. 2197. Delictum est: 3° *Notorium notorietate facti,* si publice notum sit et in talibus adiunctis commissum, ut nulla tergiversatione celari nulloque iuris suffragio excusari possit.

[9] Can. 2356. Bigami, idest qui, obstante coniugali vinculo, aliud matrimonium, etsi tantum civile, ut aiunt, attentaverint, sunt ipso facto infames; . . .

seems public since it is common knowledge among most of the parishioners. This does not in itself mean that the delict is notorious or even formally public. The lack of knowledge of the penalty on the part of the parishioners would make the delict formally occult and the case an occult case. In that event, the Ordinary can dispense from it for the internal forum. Should there be probable doubt as to the public knowledge that the penalty has been incurred, canon 209 supplies the needed jurisdiction.[10]

PART OF CONSULTORS IN CALLING SYNOD

I have had a discussion with a fellow Diocesan Consultor as to whether the bishop needs the advice of the Board of Diocesan Consultors before proceeding to call a diocesan synod. He maintains that this is required by the legislation of the Council of Baltimore. Does that legislation still remain effective?

DECURIO

The III Plenary Council of Baltimore did provide that both in summoning a diocesan synod and in promulgating its decrees the bishop should have the advice of the Board of Diocesan Consultors.[1] This was a requirement that did not exist under the general law of the Church, just as it does not bind under the legislation of the Code. However, pre-Code law required the bishop to present to the cathedral chapter the plan of his proposed legislation and to do this a reasonable time in advance of the synod itself. In presenting this plan he was required to seek the advice of the chapter with

[10] From the solution of the problem it is apparent that the case has been considered entirely from the viewpoint of the penalty of legal infamy and that what has been said does not touch the question of the excommunication imposed by the legislation of the III Plenary Council of Baltimore (*Acta*, n. 124) and reserved to the Ordinary. Moreover, the statement of the case presupposed the need of dispensation from the matrimonial impediment of *crimen* resulting from the attempted marriage and adultery; cf. can. 1075, 1°.

[1] *Acta*, n. 20.

reference to it.[2] In place of this procedure, the bishop is now required to submit the proposed ordinances to all those who have been summoned to the synod[3] and to permit free discussion of them in preparatory sessions held under his own presidency or the presidency of a delegate.[4] These sessions were not introduced by the Code[5] but the Code attached to them a strict obligation.

The purpose of consulting the chapter for adoption of the legislation to be enacted in the synod is served under the legislation of the Code by the required consultation with all those who have been called to the synod.

Now it was in the light of the general requirement that Smith[6] and Fanning[7] understood the ruling of the III Plenary Council. Since this can be accepted as the intent of the legislators and since it has been supplanted by the norm set down in the Code in canon 360, § 2, it seems fair to conclude that the consultation of the Board of Diocesan Consultors is no longer required. This argument receives added weight from the fact that the Code has introduced the rule requiring the attendance at the synod of the Board of Consultors and this by reason of their office.[8] Since they are thus given ample opportunity in the preparatory sessions to offer their advice with regard to the proposed legislation, no purpose is served by a special consultation with them as a separate and distinct body.

It is true that one cannot explain away the obligation of a law by showing that its aim is met just as well in some other way. For that reason Klekotka[9] holds that bishops are still obliged by the rule of the III Plenary Council to consult the Board of Diocesan Consultors before calling a synod and also before promulgating its

[2] Cf. Wernz, *Ius Decretalium*, II (3. ed., Prati, 1915), n. 863.

[3] Cf. can. 360, § 2.

[4] Cf. can. 361.

[5] Cf. Wernz, *loc. cit.*

[6] *Elements of Ecclesiastical Law*, I (9. ed., New York, 1893), pp. 499 seq.

[7] *The Catholic Encyclopedia, s.v.* "synod".

[8] Cf. can. 358, § 1, 2°.

[9] *Diocesan Consultors*, The Catholic University of America Canon Law Studies, n. 8 (Washington, D. C.: The Catholic University of America, 1920), pp. 114-116.

decrees. In this he is followed by Donnelly.[10] Barrett,[11] on the other hand, disagrees with Klekotka and points to a position taken by Klekotka himself with regard to the appointment of Diocesan Consultors.

Under the legislation of the III Plenary Council half the number of the Board was required to be named from nine names proposed by the diocesan clergy to whom the care of souls had been entrusted. The sole requirement with regard to the selection of this half of the Board was that the priest chosen be proposed by at least one other priest to whom the care of souls had been entrusted. Now canon 424 places no such restriction on the bishop's right to select the members of the Board. To be consistent with what he says in relation to the obligation to consult the Board for the convocation of a synod, Klekotka should say that the particular legislation of the III Plenary Council of Baltimore remains effective with regard also to the choice of the members of the Board. On the contrary, he says that the bishop's freedom is no longer restricted in this respect. Barrett thinks he is right and so does the writer.

But for the same reason one seems justified in arguing also, as Barrett does, that the restriction of the bishop's freedom in calling a synod and promulgating its decrees is abrogated by the Code, except in the measure in which the purpose of the rule of the III Plenary Council is served by the required submission of proposed legislation in the preparatory sessions of those called to the synod.

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[10] *The Diocesan Synod,* The Catholic University of America Canon Law Studies, n. 74 (Washington, D. C.: The Catholic University of America, 1932), pp. 44, 113.

[11] *A Comparative Study of the Third Plenary Council of Baltimore and the Code,* The Catholic University of America Canon Law Studies, n. 83 (Washington, D. C.: The Catholic University of America, 1932), pp. 79, 80.

Decrees and Decisions

CANONICAL

The Holy Land

On Good Friday our Holy Father issued the encyclical *Redemptoris nostri* in which he urged Catholics everywhere to use every legitimate means to bring about the internationalization of Jerusalem and its vicinity and to assure full protection of Christian rights in the Holy Land. The encyclical also called on Christians to join in prayer for the restoration of a true peace in Palestine and praised the efforts of public and private agencies to aid the refugees.

* * * * *

Canonization

The twelfth saint canonized by Pius XII is St. Joan de Lestonnac whose canonization took place on May 15; St. Mary Joseph Rossello, who in 1837 founded the Daughters of Our Lady of Mercy, was canonized on June 12.

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Social Studies

By a motu proprio *Quandoquidem templum* our Holy Father established the parish of St. Eugene and set up in it an institute of specialized social studies for the junior clergy.

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Use of Vernacular

In the Diocese of Liege a text is in preparation in French for the Province of Liege (in Flemish, for the Province of Limberg) for use in the administration of the Sacraments of Baptism, Extreme Unction and Matrimony in the vernacular.

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Puerto Rico Policy

Most Rev. James P. Davis, D.D., Bishop of San Juan, and Most Rev. James E. McManus, C.SS.R., J.C.D., D.D., Bishop of Ponce,

issued a pastoral condemning abortion, sterilization, and the use of contraceptives.

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Colombia Election

Most Rev. Ismael Perdomo, Archbishop of Bogota, Colombia, forbade support in the elections of June 5th of those who supported the Bogota uprising in April 1948.

SECULAR

Free Speech

In a 5-4 decision the Supreme Court of the United States reversed the conviction of Rev. Arthur Terminiello of the Diocese of Mobile for a speech he delivered in Chicago in 1946 on the ground that the statute under which he was convicted seriously invaded the right of free speech. The decision did not advert to the fact that his speech was not the cause of the disorderly conduct involved, but rather the desire of the mob to prevent him from delivering his speech. Therefore it did not touch the question whether one offends against the public peace when, in asserting a right, he is the occasion for disorderly conduct on the part of others who resort to violence to interfere with the exercise of that right. The untouched issue is whether one who is the victim of a mob can be prosecuted for the violence of the mob, when his only fault is that he did not yield to their intimidation. It could resolve itself into this: does the police power protect rights or the invasion of rights?

* * * * *

Federal Aid to Education

A school health bill providing for the allocation of $35,000,000 has passed the United States Senate. The Senate has also passed by a vote of 58-22 the Thomas Federal Aid to Education Bill providing for the allocation of $300,000,000. It defeated amendments suggested by Senator Brien McMahon of Connecticut and Senator Forrest C. Donnell of Missouri. A voice vote rejected the former which sought to insure the transportation of pupils of parochial and

private schools, but Senator McMahon was supported by Senators Irving M. Ives of New York, Edwin C. Johnson of Colorado and Henry Cabot Lodge, Jr., of Massachusetts. Senator Donnell's amendment was defeated by a vote of 71-3; Senator Donnell was joined in his advocacy of it by Senators Harry Cain of Washington and John L. McClellan of Arkansas. Its terms contained an explicit prohibition preventing the States from spending any of the money for parochial schools. The Thomas Bill itself is not acceptable because it leaves the inclusion or the exclusion of parochial school pupils to the determination of the individual States, though in determining the amount to be allocated to the States, the children attending parochial schools are counted in all instances. The health bill is a just one, as contrasted with the Thomas Bill, since the former provides for direct Federal allocation of funds to non-public school pupils in the case of States whose constitutions forbid the States themselves to give this aid. Worse than the Thomas Bill is the Barden Bill, entitled "Public School Assistance Act of 1949" which explicitly limits the grants to children in the elementary and secondary grades of *public* schools and further restricts the use of the grants to current expenditures (to the exclusion of health and transportation). The Barden Bill, as might have been expected, was endorsed by the Southern Baptist Convention meeting in Oklahoma City. It is reported that General Eisenhower and ex-Governor Stassen have gone on record as favoring the restriction of federal aid to poor States.

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Social Security for Employes of Tax-Exempt Bodies

In a hearing before the House Ways and Means Committee the National Catholic Welfare Conference endorsed legislation that would extend social security benefits, inclusive of provisions for old age and survivors' insurance, to religious, charitable, and educational organizations, but on a voluntary basis to preserve their tax-exemption status. Previous efforts to realize these aims were defeated in the 79th and the 80th Congresses.

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Federal Health Program

The National Catholic Welfare Conference's Bureau of Health and Hospitals, the National Conference of Catholic Charities and

the Catholic Hospital Association of the United States and Canada have issued a statement against the monopoly which would inevitably be the result of a government system of compulsory health insurance. It said that health care should be made available to all persons not only in terms of institutional facilities and trained personnel but also in terms of a reasonable cost to the public.

* * * * *

Federal Child Care Program

Rt. Rev. Msgr. John O'Grady, Secretary of the National Conference of Catholic Charities, testifying before the House Ways and Means Committee, criticized the Social Security Extension Bill as affecting private agencies adversely by requiring a community, in order to qualify for Federal funds, to abandon voluntary organizations in the care of children and by discouraging voluntary organizations in the prosecution of their work through the implicit threat that the Federal government aims to take over the entire field of child care.

* * * * *

Wise's Accusation

The attack by Rabbi Stephen S. Wise on the Catholic Church, accusing it as standing unequivocally for war, was disavowed by the American Jewish League Against Communism Inc. in a statement sent to Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington.

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1933 Faux Pas De Luxe

It was legally unjust for the United States to recognize Soviet Russia without demanding that the latter guarantee fundamental rights to its citizens. This verdict is credited by the news reports to the final lecture in a series on "The Lawyers and the Natural Law" conducted in Chicago under the auspices of the Catholic Lawyers' Guild. The lecture was delivered in the presence of four hundred judges and lawyers by His Eminence, Samuel Cardinal Stritch.

* * * * *

Compulsory Public School Attendance

Dr. John L. Childs of Teachers' College, Columbia University, speaking at a meeting of the American Association for Jewish Education expressed the hope that a number of the States would pioneer in legislation requiring parochial school children to spend one-half school time in the public schools, insinuating that Catholic education is designed deliberately to prevent Catholic children from studying with other children in the common schools. The insinuation was answered by Rabbi Dr. Joseph H. Lookstein of Yeshiva University, New York, who said that religious leaders will not concede that there is no place for God in the education process and who denounced as totalitarian in effect legislation that would require compulsory public school attendance.

* * * * *

Released Time Program

Dr. Erwin L. Shaver of Chicago, director of weekday religious education for the International Council of Religious Education, reports that of fifteen States in which rulings have been handed down on released time since the decision of the Supreme Court of the United States in the McCollum case, fourteen have pronounced it legal within limits. He avers that of twenty-one large cities then conducting such a program, only two, St. Louis and New Orleans, have given it up, while Milwaukee has in the interval inaugurated it. Moreover, he affirms that two Attorneys General have said that public school buildings may be used for religious classes. He insists that in the number of pupils attending these classes there has been only a ten percent decrease.

In Buffalo the 161st General Assembly of the Presbyterian Church in the United States urged all its churches to conduct weekday classes in religious instruction so long as there is no violation of the law; it insisted that the ruling in the McCollum case does not forbid released time classes but only prohibits the housing of them in public school buildings and the use of public school machinery in the enrollment of pupils. In Montreal, North Carolina, the legislative body of southern Presbyterians urged full collaboration with every local movement to secure religious instruction in cooperation with the public schools, provided that local school boards do not object.

The Education Committee of the House of Representatives of the State of Washington defeated a measure that would have permitted a released time program. The measure had already passed the Senate. It called for a constitutional amendment to be submitted at the 1950 election. A similar measure was defeated in the 1947 Legislature and another bill was vetoed in 1945.

Fairfax County, Virginia, has dropped released time as of the forthcoming term. In Suffolk, Virginia, the school board voted 5-1 against released time.

The Freethinkers of America have withdrawn from the Court of Appeals in Albany an issue involving released time in the City of New York against the wishes of the attorney representing the City.

A court test is in preparation in reference to the right to teach religion after school hours in a public school in Westport, Connecticut. The test is sponsored by the American Civil Liberties Union and the American Jewish Congress.

* * * * *

New Mexican Bus Ride

Attorney Joe L. Martinez of New Mexico has authorized the continuance of bus transportation of all school children until the court enters judgment forbidding it. He has also ruled that textbooks may be supplied to the children, though not to the schools.

A motion has been filed requesting the court to amend 81 of the 93 findings and to strike 14 of the 22 conclusions reached by it in the case against the religious teaching in public schools. Among the items on which revision is sought are the following:

1) the barring of the defendants from teaching in the tax-supported schools of the State;

2) the prohibition against the supplying of textbooks to students in parochial schools;

3) the ruling that the supplying of bus transportation to such students is unconstitutional;

4) the prohibition against the leasing for public school use of buildings owned by the Church;

5) the finding of fact that school hours include any period of time during which the children are under the supervision of the teacher.

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Abandon Ship

In substance this seems to be the advice given by Jerome G. Kerwin, professor of political science at the University of Chicago writing in the *National Catholic Educational Association Bulletin*. He argues for the abandonment of the historical argument in regard to the meaning of the First Amendment to the Federal Constitution. His argument seems to rest on the idea that we haven't been able to do anything with it. This is, of course, owing to the fact that the Supreme Court Justices, once relying on that historical argument when they thought it told for their prepossessions (as in Justice Rutledge's dissenting opinion in the Everson case), have abandoned it now that they realize that the historical argument runs counter to those prepossessions. Prof. Kerwin's argument could be illustrated by an analogy with our dealings with Russia. Since we can't do anything with Russia on the basis of the Teheran, Yalta and Potsdam agreements, let's abandon those agreements and admit that there is progressivism in international relations. That procedure simply means we always surrender to what the mighty and the obstinate insist on having for themselves. It is the road to tyranny.

The Constitution of the United States makes ample provision for legal progressivism, since it sets down the means by which it can be amended. Those means quite definitely require a real shift in sentiment before change can be tolerated. It is because those who oppose the historical argument understand that they have failed time and again to amend the Federal Constitution in this matter that they hail with rejoicing the new method of amendment, i.e., amendment by judicial decree.

It is hard to agree with Prof. Kerwin on another phase of his argument. He thinks that if we smile and pat the bigots on the back we can convince them that, no matter what was originally meant by the First Amendment, the time has come when Catholic schools should receive public support. This plan seems as futile as that which would seek to win anything for the Church through a friendly handshake with Vishinsky. The only purpose a handshake would serve in the case of Vishinsky or our own anti-parochial school secularists is to give them the grip they need to practise judo on us.

If we told them that private education would be impossible without public aid, as Prof. Kerwin suggests, they would celebrate the funeral of private education even before life became extinct. One would like to listen in on a conversation in which Prof. Kerwin would attempt to win to his side an opponent like Mrs. Agnes Meyer. The results of such an attempt can be almost infallibly predicted.

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Free Transportation

The Supreme Court of the State of Washington has declared unconstitutional a State statute that permitted bus transportation for children attending non-public schools. In 1945 the same Court rendered a similar decision nullifying a statute enacted in 1941. The recent ruling was made in a case appealed by Mr. and Mrs. Yelte Visser, parents of four children who had been denied transportation on a Whatcom County School District bus because the children attended the Sumas Christian school, conducted by the Christian Reformed Church. This denial resulted from an order made by Mrs. Pearl Wanamaker, State Superintendent of Schools, who opposed a ruling of the State Attorney General to the effect that the statute was constitutional. It is probable that the case will reach the Supreme Court of the United States.

The Missouri House defeated by a 74-19 vote an amendment that would have barred from riding public school busses children attending private and parochial schools. In 1946 the Attorney General ruled that it is not unconstitutional to permit these students to ride these busses.

The Governor of Michigan has signed a bill which broadens the authority of Michigan school districts to transport in public school busses children attending private and parochial schools.

In a Mankato, Minnesota, case, the court held that a public school district cannot pay for the transportation of parochial school pupils even though the district's own school is closed.

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Tuition Payments

Middletown, R. I., has no high school but pays tuition to the high school of an adjacent town. Six hundred residents asked that the town pay the tuition of high school students attending approved

private and parochial high schools. Their attorney said that elsewhere in Rhode Island, school boards allow pupils to attend the high school of their choice. But the Middletown school board refused the petition.

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Vermont Vacillation

The 1949 Vermont Legislature first rejected a bill that would have appropriated $12,000 for scholarships to St. Michael's College, Winooski. This would have placed the college on an equal footing with the University of Vermont and Middlebury College (both of which are reported to have regular chapel exercises). As a result of protests, however, the Legislature, before adjourning, voted $3,000 to St. Michael's for this purpose.

By a vote of 13-9 the Vermont Senate defeated a proposal that would have made all Catholic schools and several private colleges subject to taxation.

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The Status of the *Nation*

F. T. Spaulding, State Education Commissioner of New York, insists that the freedom of the press does not oblige boards of education to purchase or accept any particular publication for the children under their charge. For that reason, the State Education Department affirmed that the public school officials of the City of New York were within their rights in barring the *Nation* from their libraries. Incidentally, they are still acting within the rights thus affirmed.

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Legislative DDT

Stringent laws against the Communists have been enacted in Maryland. Laws dealing with them have also been introduced in New York, Texas, Kansas, Illinois, New Jersey, Georgia, New Mexico, Missouri, Oregon, Connecticut, New Hampshire and California.

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FEPA in New Mexico

The Legislature of New Mexico has passed a fair employment practices act by a margin of one vote.

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Hospital Aid in Kentucky

The Kentucky Court of Appeals has approved State financial aid for religious as well as non-denominational hospitals. A Catholic and an Episcopalian hospital involved in the case were shown to admit patients without reference to creed.

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Mass Bequests in Ohio

In a case involving a bequest of $35,000 for Mass intentions, a probate court in Cleveland held that the bequest constituted a charitable trust and was valid as such.

The Fifth District Court of Appeals, in another case, held that the inheritance tax must be paid on bequests for Masses.

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Atheism Enjoined

In Cook County, Illinois, the Supreme Court issued a writ of injunction ordering an atheist to discontinue teaching his children that the story of Christ is a myth and that there is no God. The writ was issued on behalf of the estranged wife of the defendant.

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Official Bolivian Recognition of Catholicism

It is reported that a Bolivian decree officially recognizes and supports the Catholic religion as the basis of the teaching of morality. The teaching of religion has been made obligatory in all secondary schools and teachers' colleges, though exemption is granted pupils at the request of their parents or guardians.

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Communism Discredited in Argentina

Article 157 of the new Constitution of Argentina provides that the State refuses recognition, regardless of their aims, to national and international organizations upholding principles opposed to the individual freedoms recognized in the Constitution or opposed to the democratic system.

Absolute Divorce Rejected in Philippines

On April 5th the Lower Chamber of the Philippine Legislature voted overwhelmingly against absolute divorce for any reason. The provision became law when signed by the President.

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The Bonn Constitution

The Bonn Constitution, consisting of one hundred forty-seven articles, was approved by a 53-12 majority of the Parliamentary Council and ratified by a two-third majority of the West German States. It retains the State supervision of religious instruction and allows religious training in confessional State schools but not in non-denominational State schools. Article 3 provides that no one shall be prejudiced or privileged because of sex, descent, race, language, homeland and origin, or his religious or political opinions. Article 4 affirms that freedom of faith and conscience, as well as religious and ideological profession, shall be inviolable; and the undisturbed practice of religion, guaranteed. It also insures that no one may be compelled against his conscience to perform war service as a combatant. Articles 6 and 7 treat of marriage, the family and education. Marriage and the family are placed under the specific protection of the State. The care and the upbringing of children are held to belong by natural right to the parents, a right and duty which it extends to include illegitimate children in the same measure as legitimate children. Article 7 avers that those who have the right to rear a child possess the corresponding right to determine whether it shall receive religious instruction. On the other hand, it insists that no teacher shall be compelled to teach religion. It ordains that private schools cannot be established without the sanction of the State and requires that the economic and legal status of teachers in these schools must be assured.

The German Hierarchy, speaking through His Eminence, Joseph Cardinal Frings, Archbishop of Cologne, states that it cannot accept this Constitution except as a provisional one to be supplemented at an early date. A fundamental ground of objection was found in the fact that the right of the parents to determine the religious character of public obligatory schools was not incorporated.

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Birth Control in Japan

The Catholic Women's Club of Tokyo, as well as the whole body of chaplains of the Tokyo-Yokohama area, have protested to General MacArthur against misrepresentation of the Catholic position on birth control as made by Dr. Warren S. Thompson, who is reported to have said that the Catholic Church in the United States would not oppose contraceptive birth control in Japan and that the Church is opposed to artificial birth control only when it is practised for immoral purposes.

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Belgian Subsidy to Louvain

The Catholic University of Louvain and two associate faculties, those of St. Louis and of Our Lady of Peace, were included in a subsidy bill of $450,000 passed by the Belgian Legislature.

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French Subsidy

The French Council of State has issued a ruling to the effect that the law of the separation of Church and State does not prevent public administrations from paying the costs of religious ceremonies.

Twenty thousand fathers at Ploermel, Brittany, members of the Association of Church School Parents, adopted an insistent plea for State grants in support of Catholic schools.

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Processions in Holland

Dutch Protestant groups have complained to the Cabinet, asking for the enforcement of the law which permits processions only in places in which they were held before 1853. The complaints alleged that the practice is not being restrained within those limits.

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Polish Restraint

A joint pastoral of the Polish Hierarchy has been suppressed by the government.

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UN Reaction to Mindszenty Trial

Against opposition from the Russian bloc, the UN General Assembly adopted a resolution referring the violation of human freedoms

in the recent trials in Hungary and Bulgaria to settlement under peace treaties made with those countries. The United States and Great Britain, signatories to the peace treaties, have protested to Hungary and Bulgaria about the character of the trials.

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Hungarian Calvinism Under Fire

The Federation of Free Churches has been established in Hungary to represent all Hungarian Protestant communities. It is headed by the allegedly renegade Calvinist Bishop Adalbert Bereczky.

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Czechoslovakia: Next Victim to the Block

The Communists are bending every effort to establish an independent State church in Czechoslovakia. In the furtherance of this objective they have resorted to a propaganda sheet to offset the instructions of Archbishop Joseph Beran of Prague to his clergy. As a step in the process, they seek to split the Catholic ranks by favoring the few priests who are collaborating with them. They have made a clamorous issue of the excommunication of the clergy who have entered politics in opposition to the prohibition of the Archbishop. Other steps in the process are the following: the demand that all communication with the Vatican shall pass through the Prague Foreign Office; the censoring and the suppression of Catholic publications; the restriction and the suppression of Catholic organizations; the spying upon sermons; and the imprisonment of some one hundred and twenty priests. At the same time, they are putting pressure on the two hundred thousand members of the Oriental rite to join the Orthodox church.

On Saturday, June 18, the Archbishop drove to the Strahov monastery and made a stirring plea for loyalty to the Church. In the course of his address he warned his listeners in almost the same terms as those used by Joseph Cardinal Mindszenty prior to his arrest that they should not believe any reports made that he had concluded an agreement that infringed the rights of the Church. For three days prior to that address, according to reports, police ransacked his house, apparently seeking evidence for use against him. This action is said to have followed a refusal on the part of the Archbishop to accede to a demand made by the Ministry of Education under an act of 1847 that it be given control of all incoming and outgoing correspondence, papers and telephone calls.

Romania Hammers Away

In a reply to the Minister of Religious Affairs, Bishop Aaron Marton of Alba Julia, senior of the two Catholic bishops still functioning in that country, refused to compromise with the government on fundamental issues including the Supremacy of the Pope, the latter's exclusive right to appoint bishops, his exclusive right to fix the number of dioceses, and the right of bishops to communicate with the Holy See.

Similar opposition on the part of the members of the Oriental rite has resulted in the imprisonment of some six hundred priests of the Oriental rite for their refusal to join the Orthodox church. Even the priests of the Orthodox church are allowed to retain their posts only if they submit to a three-month Marxist indoctrination course. Yet it is said that only ten percent of the people are Communists and that sixty percent of them are actually hostile to Communism.

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Albanian Version

In Albania, where ten percent of the population is Roman Catholic, it is reported that all Catholic schools are closed, Catholic Action is outlawed, Catholic printing establishments are confiscated. All Italian priests have been expelled and priests of Albanian ancestry are under constant threat of arrest. Nuns have been sent home and forbidden to wear the religious garb. Two of the five members of the hierarchy have been executed; one, imprisoned for twenty years; one, deceased (the see vacant); the fifth, aged seventy-four, released from prison because of ill health.

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Internationalization of Jerusalem

Cardinal Gregory Peter XV Agagianian, Patriarch of Cilicia of the Armenians, and Archbishop Alcide Marina, Papal Nuncio to Lebanon, have issued statements calling for the internationalization of Jerusalem, Bethlehem and Nazareth. The latter said that only an international constitution can guarantee the sacred character of the religious shrines.

In Jerusalem, the Franciscans have been offered permission to return to the Chapel and Monastery of the Cenacle on Mount Sion. Before they return, they stipulate that, among other conditions, Israel must grant reparation for extensive damage and restore looted property.

Book Review

READY ANSWERS IN CANON LAW by Rev. P. J. Lydon, D.D. Benziger Bros., Inc., 1948. Pp. xvi + 636. $6.00.

In this new edition of his very helpful work on Canon Law Father Lydon gives the reader an amplified and entirely revised summary of the Code on the lines of his previous editions. Some forms still remain in the text, but a great many of them are now to be found in an appendix which contains specimen documents useful for parish, diocesan, or Roman Curia problems.

Several new titles have been added in the present edition. In matters pertaining to marriage there is treatment of birth control, the simulation of consent and the parties to a marriage as plaintiffs, with a note on apostates as non-catholic plaintiffs. There is also consideration of *stipes* with schemata in regard to consanguinity, with a discussion of multiple relationship and a list of the Latin names of relatives. The discussion of the cumulation faculty, brief but clear, is helpful, as is that on marriage dispensations in general and on the minor impediments.

Several new titles have also been added with regard to procedure. There is discussion of: the libellus, auditors, assessors, experts, processes concerning clerics, matrimonial processes, proofs in Canon Law, rogatory commissions, definitive sentence, and summons to court. Considerable expansion is to be found in the titles on: the defensor vinculi, ecclesiastical judges, the promoter of justice, the Rota, and witnesses in Canon Law.

There are also worthwhile discussions on: general absolution, *acta* in the Code, Religious and debts, appointments, secret archives, the use of saliva in regard to Baptism, the merger of parishes and the visitation of a diocese. Further discussions deal with: cases of conscience, marriage cases, the decree of the Sacred Penitentiary with regard to celibacy, Christian names, privileges of clerics and coercion in regard to Communion.

Atheistic Communism is succinctly discussed, as are competent knowledge, the new decree regarding Confirmation, the consecration

of churches, consistorial benefices, cornerstones and the execration of churches. Perhaps the book appeared too late for references to the second edition of Monsignor Doheny's volume on *Canonical Procedure in Matrimonial Cases,* which appeared in 1948. At any rate, the references in this edition of Father Lydon's work are still to the first edition of Monsignor Doheny's work.

There appears to be a change in Father Lydon's thinking in regard to the effect of a civil impediment in the case where one party is baptized and the other not.

The section on valid and lawful sponsorship in regard to Confirmation has been expanded, and that on the Roman Congregations has been recast. The section on the Vicar Capitular, in the matter of dimissorial letters, has also been expanded and there are additions in the section relating to the effects of division of a diocese. A new decree has been added to the section regarding the dismissal of seminarians. Expansion appears in the title covering local Ordinaries and their powers with regard to dispensations.

There are also titles on: examination before orders, " Faith and Science," guardians, degrees of guilt, " illicit, invalid," the installation of pastors, instructions, jurisdiction for the Sacrament of Penance on board an airplane, the force of Canon Law, mandate for acts, and minors in Canon Law.

The power of local Ordinaries with regard to the privilege of exemption is given an expanded treatment, as is the matter of converts from heresy and of indulgences.

The reader will find, too, a consideration of negligence, dying non-Catholics and the Sacraments, incompatible offices, *opus vocationum,* the Constitution of Pius XII on the True Matter and Form of the diaconate, the priesthood, and the episcopate, given November 30, 1947.

The discussion of place of origin, Patriarchs and Primates, Patrons, remedial penalties and penances, perjury, persons, the place for acts, " pre-Code, post-Code," will also prove helpful. Similarly helpful is the summary of the encyclical on the priesthood, and the discussion of privileges in connection with Regulars, as well as the expanded treatment of punishments, especially with specific reference to Religious.

The recasting of the section on records will make that more useful, one feels. One is glad to see, too, the discussion of the indult

granted to the bishops with regard to reserved censures, and the discussion of restoration to former position (*restitutio in integrum*). The statement on the Rosary during October will also be of use to pastors, as will the discussion of the seal for "acts." The mention of the Rosicrucians in regard to forbidden societies will answer the question which has perhaps been in some minds.

The sections on suppression, suspicion of heresy, the Syllabus of Errors, the time for services, title-titular-in titulum, and travelers are also welcome expositions of these points. The collection of technical terms in Canon Law should prove very useful.

The additional cross-references are a great aid to the study and the comprehension of the law, but one would prefer to see greater uniformity in the size of type used in the cross-references. It is somewhat confusing to find them sometimes in small, sometimes in large type.

The analytical index at the beginning of the book is well done and could prove useful not only to the Canonist and the student in the Seminary, but also to the lawyer who is desirous of learning something about the Canon Law. The index to the entire work has been expanded, of course, to keep up with the increase in titles in the present edition.

All in all, the work is so well done, despite the great amount of material which had to be compressed into a small space, that one hesitates to point out the omission of Aertnys-Damen from the list of works on Moral Theology in connection with books on Canon Law. Likewise, one should not, perhaps, criticize the use of the term "vindictive" in connection with penalties, though it seems, because of its connotation, to render quite poorly the concept involved in the Latin *vindicativa* with its underlying reference back to the *vindicatio* of Roman procedure. While it may seem that in inflicting such penalties society is being vindictive, which is one of the oldest theories of penal law, nevertheless, one is more inclined to believe that the spirit of the Code is that of vindication of the rights of the community, and that for the sake of those who desire to know what the Church does in its laws a term with less unfortunate connotations should be chosen.

THOMAS OWEN MARTIN

THE CATHOLIC UNIVERSITY OF AMERICA

Chronicle

GENERAL

His Holiness, Pope Pius XII, offered two low Masses on Passion Sunday, April 3rd, at the main altar in St. Peter's; the second was a votive Mass for the remission of sins. Later that day, he presided at a Pontifical Mass in St. Mary Major.

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Most Rev. Egidio Vagnozzi, D.D., Titular Archbishop of Mira and Apostolic Delegate to the Philippine Islands, was consecrated on May 22nd by His Eminence, Giovanni Cardinal Piazza, Secretary of the Sacred Consistorial Congregation, in the Basilica of Santa Maria Sopra Minerva.

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Most Rev. Francesco Lardone, J.U.D., D.D., Titular Archbishop of Rhizaeum and Apostolic Nuncio to Haiti and Santo Domingo, was consecrated in the Shrine of the Immaculate Conception, Washington, D. C., on June 30th. The consecrating prelate was His Excellency, the Most Reverend Apostolic Delegate, A. G. Cicognani, D.D. Co-consecrating prelates were Most. Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, and Most Rev. Egidio Vagnozzi, D.D

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Most Rev. Alfredo Pacini, D.D., formerly Apostolic Nuncio to Haiti and Santo Domingo, has been named Apostolic Nuncio to Uruguay.

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Most Rev. Albert Levame, D.D., formerly Apostolic Nuncio to Uruguay, has been assigned to a post in the Secretariat of State.

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Most Rev. Maximilian de Fuerstenberg, formerly Rector of the Pontifical Belgium College, has been named Titular Archbishop of Palto and Apostolic Delegate to Japan. He was consecrated on April 25th by His Eminence Joseph Cardinal Van Roey, Archbishop of Malines.

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His Eminence, Norman Cardinal Gilroy, Archbishop of Sydney, attended the fourth St. Francis Xavier centennial celebration in Japan as Papal Legate.

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The Catholics of France observed the golden jubilee of Pope Pius XII by presenting him with a television broadcasting station.

Patriarch Athenagoras of the Greek Orthodox Church, through Most Rev. Andrew Cassulo, D.D., Apostolic Delegate to Turkey, conveyed to Pope Pius XII his good wishes on the occasion of the tenth anniversary of the latter's coronation. The Pope sent back a message of appreciation.

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Javier Paz-Campero has been accredited to the Vatican as Ambassador of Bolivia.

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A papal mission has been set up for Palestine under the leadership of Rt. Rev. Thomas J. McMahon, National Secretary of the Catholic Near East Welfare Association, as President. Its purpose is to combine all Catholic efforts throughout the world in behalf of the hundreds of thousands who have been made homeless through warfare in Palestine.

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On April 26, President Truman received the degree LL.D. from Boston College. On the same day, Senator Joseph O'Mahoney, of Wyoming, delivered the chief address to the alumni at a banquet celebrating the twentieth anniversary of the Boston College Law School.

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Vice President Alben W. Barkley addressed the Catholic May Day Rally on May 1st at the Polo Grounds, New York City.

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April 22, His Eminence, Dennis Cardinal Dougherty, presided at the dedication of the new library at Villanova College.

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On May 21, 22, the tenth anniversary of the accession of His Eminence, Francis Cardinal Spellman, was observed with two Pontifical Masses celebrated in St. Patrick's Cathedral.

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On May 8, His Eminence, Francis Cardinal Spellman, dedicated the new buildings recently erected at Boys Town.

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As part of the annual conference on Eastern Rites and Liturgies, held at Fordham University, the Holy Liturgy was celebrated in St. Patrick's Cathedral, New York City, and His Eminence, Francis Cardinal Spellman, presided at the ceremony.

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The 300th anniversary of the Maryland Toleration Act was commemorated in the Cathedral of the Assumption, Baltimore, with Solemn Pontifical Vespers at which Most Rev. Francis P. Keogh, D.D., Archbishop of Baltimore, officiated. The sermon was preached by Most Rev. Lawrence J. Shehan, D.D., Auxiliary of Baltimore. In attendance were Governor and Mrs. William P. Lane and Mayor and Mrs. Thomas D'Alessandro.

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On April 23, Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington, celebrated a Pontifical Mass in Holy Trinity Church in observance of the 150th anniversary of the founding of Georgetown Visitation Convent.

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On April 21, Most Rev. Edward D. Howard, D.D., Archbishop of Portland, Oregon, celebrated a Pontifical Mass to observe the twenty-fifth anniversary of his consecration.

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On June 7, Most Rev. Albert R. Zuroweste, D.D., Bishop of Belleville, celebrated a Pontifical Mass in St. Peter's Cathedral, Belleville, to observe the silver jubilee of his ordination.

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On June 8, Most Rev. Leo J. Steck, D.D., Auxiliary of Salt Lake City, celebrated a Pontifical Mass in the Cathedral of the Madeleine, Salt Lake City, to observe the silver jubilee of his ordination.

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On March 24, Most Rev. Martin D. McNamara, D.D., was installed in St. Raymond's Cathedral as first Bishop of Joliet. He announced that St. Francis Xavier had been chosen Patron of the new diocese.

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On May 22, Most Rev. Lawrence J. Shehan, D.D., Auxiliary of Baltimore, celebrated a Pontifical Mass in Arlington National Cemetery honoring the war dead of the United States. The ceremony was sponsored by the Washington General Assembly of the Fourth Degree of the Knights of Columbus in association with a National Committee of Catholic Societies.

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On June 12, the Diocese of Raleigh observed the twenty-fifth anniversary of its establishment.

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Most Rev. John T. McNicholas, O.P., S.T.M., Archbishop of Cincinnati, was re-elected President General of the National Catholic Educational Association at its 46th annual convention held April 19-22 in Philadelphia. The convention was opened with a Pontifical Mass celebrated by His Eminence, Dennis Cardinal Dougherty, in Convention Auditorium. President Truman sent the convention a message in which he praised the function of Catholic Education in the promotion of peace.

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June 15-17, the 39th annual convention of the Catholic Press Association was held in Denver. It opened with a Pontifical Mass celebrated by Most Rev. Urban J. Vehr, D.D., Archbishop of Denver.

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May 10-13, the annual convention of the Military Chaplain's Association of the United States was held in Chicago.

The 23rd annual convention of the American Catholic Philosophical Association was held in Boston.

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The 29th annual convention of the National Council of Catholic Men was held in Washington, D. C.

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April 18-22, the annual conference of the Catholic Library Association was held in Detroit.

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May 24, 25, the 23rd national convention of the Slovak Catholic Federation of America was held in Bethlehem, Pa.

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May 4-8, the 6th national congress of the National Federation of Catholic College Students was held in Chicago.

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April 18-20, the 21st annual conference of the Catholic Association for International Peace was held in Villanova.

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April 28-30, a three-day convention of the Serra Clubs was held in San Francisco; the date corresponded with the 200th anniversary of the coming of Junipero Serra to North America.

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June 14-16, a National Catholic Building Convention and Exposition was held in Chicago.

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May 6-8, the centenary of the founding of the Children of Mary in the United States was observed with a three-day congress at Emmitsburg, Maryland.

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April 18, the leaders of the new free Republic of Ireland attended a Mass of Thanksgiving in Dublin's pro-cathedral, presided over by Most Rev. John Charles McQuaid.

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Very Rev. Peter Schweiger, C.M.F., succeeds Very Rev. Nicholas Garcia, C.M.F., as Superior General of the Claretian Fathers.

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June 1, 2, the Trappist Abbey of Our Lady of Gethsemani in Kentucky observed the 100th anniversary of its founding.

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June 6-10, the golden jubilee of the coming of the Norbertines to the United States was observed.

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Emmanuel Cardinal Suhard, Archbishop of Paris, died at the age of 75.

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Rt. Rev. Msgr. John M. Cooper was buried May 25th from the Shrine of the Immaculate Conception, Washington, D. C. The funeral Mass was celebrated by Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington.

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DIGNITIES

Most Rev. Charles H. Helmsing, D.D., Titular Bishop of Axomis and Auxiliary of St. Louis, was consecrated April 19th by Most Rev. Joseph E. Ritter, D.D., Archbishop of St. Louis. The co-consecrating prelates were Most Rev. John P. Cody, D.D., Auxiliary of St. Louis, and Most Rev. Leo J. Steck, D. D., Auxiliary of Salt Lake City. The sermon was preached by Most Rev. George J. Donnelly, D.D., Bishop of Kansas City.

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Most Rev. John B. Grellinger, D.D., of the Faculty of St. Francis' Seminary, Milwaukee, Wisconsin, has been named Titular Bishop of Syene and Auxiliary of Green Bay.

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June 14, Most Rev. Thomas J. McDonnell, D.D., at Seoul, Korea, consecrated Most Rev. Patrick J. Byrne, D.D., Korea's Apostolic Delegate. Co-consecrating prelates were Most Rev. Paul Ro, of Seoul, and Most Rev. Adrian Larribeau, of the Paris Foreign Mission Society.

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Rev. Felix Ley, O.F.M. Cap., has been named Apostolic Administrator of the Ryukyu Islands, joined to the Vicariate of Guam after the war.

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Rt. Rev. Dominic Ferrara, F.S.C.J., pastor of Holy Trinity Church, Cincinnati, has been named Prefect Apostolic of the Mupoi Prefecture in Anglo-Egyptian Sudan, Africa.

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Most Rev. Leo F. Fahey, D.D., Coadjutor of Baker City, received the degree of LL.D. from the University of Portland, which also conferred the degree of Mus. D. on Mme. Lotte Lehmann.

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Rt. Rev. Msgr. Edward E. Swanstrom, Director of the War Relief Services of the National Catholic Welfare Conference, has received the Order of the Knights of Malta, Master Chaplain's Grade.

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On June 5, at the Josephinum, Rt. Rev. Msgr. H. L. Motry, S.T.D., J.C.D., Dean of the School of Canon Law, The Catholic University of America, was invested with the robes of a Domestic Prelate.

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The following have been named Domestic Prelates: Rt. Rev. Msgrs. Thomas Blackwell, Fidencio Esparza, Henry Gross and Anthony Jacobs, of the Archdiocese of Los Angeles; Michael Halligan, Michael English, and James H. O'Neill, Deputy Chief of Chaplains, of the Diocese of Helena; James F. Hopkins, Louis A. Marino and W. J. Stanczak of the Diocese of Erie; and Fred Witte, John Quack, Robert De Gasperi, J. Ceranski, Cyril N. Haffner, George Lohman, Frank A. Kaiser, William Hoff and Rudolph E. Jantzen, of the Diocese of Belleville.

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The following have been named Privy Chamberlains: Very Rev. Msgrs. Raymond L. Harbough and Leonard Bauer, of the Diocese of Belleville; and Joseph P. Kiefer, of the Diocese of Steubenville.

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The papal medal *Benemerenti* has been conferred on Rev. Edward V. Mooney, C.S.C.

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Francis P. Matthews took the oath of office as Secretary of the Navy. The oath was administered by Judge Edward Tamm and was taken on a Bible presented by Most Rev. Patrick A. O'Boyle, D.D., Archbishop of Washington.

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Maurice J. Tobin, Secretary of Labor, received the degree LL.D. from Boston College, St. John's University, and John Carroll University.

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William E. Cotter and Thomas J. Ross, of New York, have been named Knights Commanders and Grand Officers of the Holy Sepulchre. J. Howard McGrath, Senator from Rhode Island, and John B. Cavallaro, New York attorney, have been named Knights of the Holy Sepulchre.

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Thomas F. Mulholland, New York Port Director of the Bureau of Immigration of the National Catholic Welfare Conference, has been named a Knight of St. Gregory.

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The papal award, *Pro Ecclesia et Pontifice,* has been conferred on Miss Ruth Craven, Executive Secretary of the National Council of Catholic Women; Miss Sarah Weadick, Assistant Director of the Bureau of Immigration of the National Catholic Welfare Conference; Miss Agnes Collins, Librarian of the National Catholic Welfare Conference and head of the teachers' registration section of the Conference; Mrs. J. Edmund Kelly, of Buffalo.

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The papal *Benemerenti* medal was conferred on Miss Florence Buckley, assistant to the New York Port Director of the Bureau of Immigration of the National Catholic Welfare Conference; Miss Agnes Martin, auditor of

the National Catholic Welfare Conference; Miss Edith Jarboe, assistant director of the business office of the National Catholic Welfare Conference and assistant editor of *Catholic Action;* Mrs. Mathew Lies, who was named Catholic mother of 1947; and Frank C. Blied, of Madison, Wisconsin.

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Helen C. White was awarded a prize of $2,500 by the American Association of University Women for the year's outstanding achievement.

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Irene Dunne was awarded the honorary degree of Doctor of Laws by Mt. St. Mary's College, Los Angeles, California.

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THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

I. Date: April 22, 1949.

Title: Some Unusual Features of the 1946 Greek Civil Code.

Author: Prof. Franklin F. Russell, Doctor Iuris (New York University, 1915).

Abstract: Dr. Russell discussed the process of the drafting of the Code over a period of 111 years (1835-1946); the conflicting influences of the Code Napoleon, the German Buergerliches Gesetzbuch of 1900 and other European Codes; the prolonged struggle between the "purist" and the "demotic" elements, and the controversy as to whether or not the Code, when drafted, should be given effect.

II. Date: May 17, 1949.

Title: Political Ideology, Propaganda and Public Law of the Romans (*Ius Imaginum* and *Consecratio Imperatorum*).

Author: Eberhard F. Bruck, J.U.D., Department of History, Harvard University; Magister of the Seminar.

Abstract: Dr. Bruck demonstrated the propaganda value exerted in keeping the ruling families in power that accrued to the right of introducing into the funeral processions of these families physical representations of the great political figures of those families. He also analyzed the analogous value that in a later period supported the power of the emperors through their connection with a previous leader or emperor who had been deified. (At this meeting awards were presented to students of the Law School by Associate Justice of the Supreme Court of the United States, William O. Douglas, LL.B., LL.D. In connection with these awards, addresses were given on the Work of the Office of the Solicitor General, by Hon. Philip B. Perlman, LL.B., Solicitor General of the United States, and on Law and Language, by Felix S. Cohen, Ph.D., LL.B., Associate Professor of Law, Yale University.)